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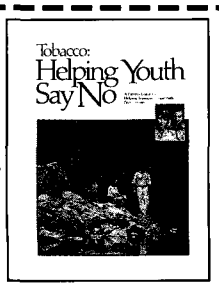

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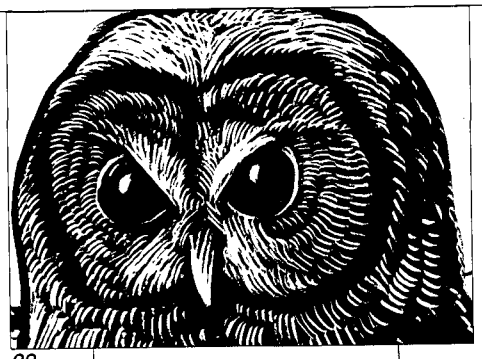


22

FEATURES

22 ■ All Creatures Great and Small
Charles Oliver
Endangered species run amok.

28 ■ Secrets for Sale
Jacob Sullum
Who knows what about you?
And what should we do about it?

36 ■ Russia's Real Radicals
Cathy Young
Leading Moscow to the market.

36

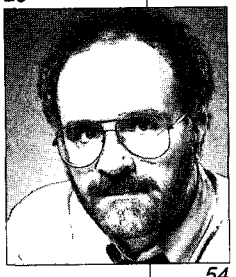
20

EDITORIALS

4 ■ New World Man
Virginia I. Postrel
The end of history and the disappearance of the West.

6 ■ Attitude Problem
Jacob Sullum
Why I hate my cable company.

51



54

COLUMNS

20 ■ A Crazy Man's Utopia: The Mobile Socialist State
Todd Seavey
It's coming to America.

42 ■ Magazines: The Third Way
Martin Morse Wooster
Foreign policy in the post–Cold War world.

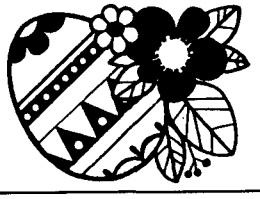
44 ■ Movies: Narc Adaptation
Jacob Sullum
Rush sits out the drug war.

DEPARTMENTS

8 ■ Letters

14 ■ Trends

18 ■ Brickbats



46 ■ Singapore: Studs
Michael Konik
Where are Jim Lange and Chuck Woolery when you need them?

48 ■ FDA Watch: Unequal Treatments
Elizabeth Larson
Playing God with Alzheimer's patients and their families.

58 ■ Selected Skirmishes: Oliver Stone's Brain is Missing
Thomas W. Hazlett
The lone-director theory.

THE BOOK CASE

51 ■ Duty Call
Loren Lomasky
Rights Talk: The Impoverishment of Political Discourse, by Mary Ann Glendon

53 ■ The Pork Ethic
Brian Doherty
The Culture of Spending, by James L. Payne

54 ■ A Case of Malpractice
Oren Grad
The Great White Lie: How Hospitals Betray Our Trust and Endanger Our Lives, by Walt Bogdanich

56 ■ Local Option
James Ostrowski
Undoing Drugs: Beyond Legalization, by Daniel K. Benjamin and Roger Leroy Miller

Cover illustration by Dave Bhang

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NEW WORLD MAN

VIRGINIA I. POSTREL

The most important event of the last month was not the State of the Union address, with its laundry list of tax breaks. It was not Bill Clinton's marriage problems or draft problems or election problems. It was not Mike Tyson's rape conviction or the Noachian floods that descended on Southern California.

These events made headlines, but they did not make history. And that has a lot to say about what was, in fact, the most important event of the last month: the publication of *The End of History and the Last Man,* by Francis Fukuyama. It is the first book of the 21st century, the century that began, psychologically, with last August's failed Soviet coup. (See "Fin de Siècle," November.)

Fukuyama's book is both evidence of and an argument for the disappearance of the West. And its appearance poses a fundamental challenge to liberalism: Either the book is correct, in general terms, about the end of history, or liberalism is incorrect about the nature of man, incorrect that human beings are best served by free minds and free markets.

Fukuyama's argument is complex, subtle, and almost always misrepresented. Like the book's title, it has two components. First, Fukuyama argues that history is not random or cyclical but in fact linear—that human societies progress toward a political and social arrangement that will harmonize with human nature, satisfying the deepest needs of human beings as human beings. (This historical progress is not without backsliding; witness the horrors of the 20th century.)

We have reached "the end of history," Fukuyama argues, because we have found that most satisfying arrangement in liberal democracy, "the doctrine of individual freedom and popular sovereignty." Although not every society on earth is liberal or democratic, there is no competing ideology that can credibly claim to satisfy human beings.

The second part of Fukuyama's argument presents a challenge to the economics-based liberalism of the Anglo-American tradition, the liberalism springing from John Locke and Thomas Hobbes and based on the notion that human beings seek first and foremost self-preservation. Fukuyama does not repudiate this tradition, but he finds it inadequate.

People clearly act at times on motivations quite removed from self-preservation—risking their lives for their countries or their families, for the thrill of hang gliding or the prestige of an Olympic gold medal. Satisfying these other drives is essential to producing a historical end state; tapping them is necessary to creating and preserving liberal democracy.

Fukuyama's discussion of *thymos*, the desire for recognition, attempts to understand the nature and implications of individuals' nonrational quest to be recognized as fellow human beings, as distinctive individuals, or as superiors. The varied manifestations of *thymos* have varying implications. Channeling the desire for dominance into productive pursuits—to create Ted Turners rather than Adolf Hitlers, or Mike Tyson the boxer rather than Mike Tyson the rapist—is a different kind of problem from accommodating national identity or ensuring equality before the law.

Although his exact formulation has flaws, Fukuyama is on to something in his discussion of *thymos*, for liberalism depends on recognizing not only what is the same about all human beings but also what is unique about each individual. The romantic is as much a part of the liberal heritage as the rational.

That heritage, Fukuyama claims and this magazine insists, is the common heritage of all mankind. It is the nature of human beings to seek freedom and to own it. Absent a rival ideology seeking to impose itself by both force and suasion, liberalism now faces the test of history.

The best expression of this test comes, interestingly enough, from a man whose record is far from liberal, Lee Kuan Yew, the authoritarian prime minister who ruled Singapore for 32 years. Pressed by *New Perspectives Quarterly* editor Nathan Gardels to reject the notion of universal human rights and claim that authoritarianism is better for Asia, Lee suggested instead that the difference between Singapore and Britain is a matter of historical stages, not inherent culture.

And, Lee said, "if Western values are in fact superior insofar as they bring about superior performance in a society and help it survive, then they will be adopted. I truly believe the process is Darwinian."

Which brings us to the fate of the West. It no longer exists. The term has ceased to be meaningful, for without an East there can be no West. Regions, nations, cultures still express themselves, still claim allegiances. But "the West" has blended into a world civilization, to which many cultures contribute. This civilization is greater than and different from the sum of its parts. And its basis is liberal democracy—an idea that wasn't supposed to work in Germany, or southern Europe, or Latin America, or Russia, or Asia, and still isn't supposed to work in Africa.

The disappearance of the West discomfits many people. Some cannot imagine life without international struggle and prefer to seek enemies, particularly to

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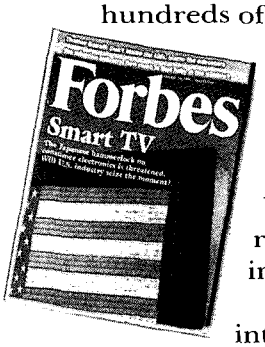

It's a clearly-defined opportunity called high-definition television.

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No guts. No story.

the East. Observing a post–Cold War world, foreign-policy analyst Christopher Layne, among others, suggests that we adopt a "geo-economic" strategy based on hurting Japan. This is not simple economic protectionism but something far more aggressive—the creation of an enemy from a commercial rival.

Others rebel against a universal culture, either by trying to fragment that culture into racially pure segments or by trying to fix the "correct" culture at some time and place in the past. But both the multiculturalists and the traditionalists are wrong; mirroring each other, they fail to recognize or accept the common, and evolving, civilization.

In this climate of division, Fukuyama's book is an audacious declaration that we are right, that freedom is in the nature of human beings, that the Whig historians were not fools or apologists but prophets. Progress is possible, despite the sins committed in its name.

Those who find a Golden Age in the past, whether in the 19th century or the 1950s, will not agree. Nor will those who see only the Other in the name *Fukuyama.*

But I believe the claim to be true. I believe it because in my lifetime I have seen the death of Jim Crow and of the Soviet empire, systems that seemed eternal before they collapsed and seemed impossible afterwards. That impossibility, and that collapse, suggest that Fukuyama is right—that it is our fate to be free.

ATTITUDE PROBLEM

JACOB SULLUM

I hate my cable company. The remote control they gave me stopped working several months ago. I went to their nearest office, a few blocks from my apartment. They told me I lived on the wrong side of an imaginary line, so I would have to make a trip to Marina del Rey, several miles away, to get a new remote control. I called the Marina del Rey office to ask about their hours; the phone rang 35 times without an answer. I ended up buying a remote control from an electronics store.

I could go on—a hefty $22 a month for basic service; a channel tuner that makes it impossible to tape one program while watching another or to tape programs on more than one channel when I'm not home; mysterious signal interruptions, lasting anywhere from a few minutes to all day; a bizarre, take-it-or-leave-it selection of channels—but you get the idea.

So do members of Congress. Sort of. They know that many people are disgusted with their cable companies, but they don't quite understand the source of the problem. "Heeding consumers' ire," as *The New York Times* put it, the Senate voted overwhelmingly in January to reregulate cable-TV rates, and the House was expected to follow suit.

The General Accounting Office says the average cost for basic cable service has risen about 60 percent since December 1986, when the Federal Communications Commission effectively abolished price controls in most markets. Supporters of rate regulation note that cable monopolies can get away with big price increases even as service remains spotty.

But these self-styled consumer advocates are remarkably incurious about how cable companies achieved their monopoly power. You will search newspaper articles about cable reregulation in vain for this interesting tidbit: Out of some 9,000 local cable systems in the United States, all but a few dozen are protected from competition by government franchises.

The Washington Post notes that municipalities award licenses to cable companies and that "99 percent of the nation's cable systems...have no direct competitor," but fails to draw any connection between these two facts. Instead, the *Post* asserts that "head-to-head competition is rare because the cost of building a second system in a community is considered prohibitive." Hence cable companies are "de facto monopolies."

The paradox here is familiar: If cable TV will always end up as a monopoly, why must local governments prevent entry into the market by competitors? In any case, head-to-head cable competition does occur where it is allowed—for example, in Phoenix, Arizona, and Mobile, Alabama. Even one competitor makes it hard for a cable company to profit despite high rates and lackadaisical service.

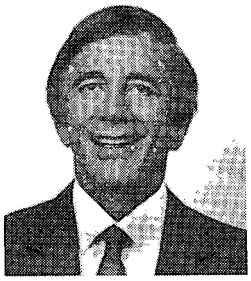
Moreover, the argument that cable TV is a natural monopoly rests on a narrow conception of the relevant market: A cable company's direct competitors include not only other cable companies but also broadcast television, satellite TV, "wireless cable" (via microwaves), and (if the law allowed it) telephone companies—anyone who can bring audiovisual information into your home.

Years of government protection have given cable companies a double advantage. They don't have to worry about competition from other cable companies. And because of the dominant position this gives them, they can try to deter competition from satellite TV and wireless cable, relative newcomers, through their influence as major buyers of programming and part owners of many cable channels.

But the answer is not new regulation to compensate for the effects of past regulation. Congress can promote competition, first, by abolishing monopoly franchises. Without the franchises, both established cable companies and new entrants will be free to compete for the same customers.

Second, Congress should approve pending legislation to let phone companies into the TV market. (Cable operators are already beginning to get into the telephone business.) Phone companies have the necessary lines in place and so are well positioned to start competing soon.

As viewers begin to choose from an expanded range of TV options, the cable companies may find that protection has its disadvantages. Shielded from competition, they have developed a bad attitude. To paraphrase Lily Tomlin: They don't care. They don't have to. They're the cable company.



Incorporate Yourself and Become Judgment Proof

The nation's litigation explosion continues to worsen each day. Did you know you now have a 3 in 4 chance of being sued in the next 5 years? Here's how to protect yourself...

—by Ted Nicholas

A lawsuit that is not even your fault can turn your life into a nightmare. All you need is to *appear* successful. Too many people in the world exist that are motivated by envy and greed to act against you. A legal judgment slapped against you because of some technicality can result in your losing everything you have worked for.

It's not a pretty picture.

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That's why I'm interested in getting this message to people who are now self-employed or soon plan to be, particularly in a service business. You are especially vulnerable to devastating lawsuits and judgments *personally*. That's why operating a sole proprietorship or partnership is tantamount to economic suicide.

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LETTERS

Drug Prescriptions

I suppose I should be grateful to Jacob Sullum ("The Fixers," Dec.) for acknowledging that I am not "as irrational and dishonest" as others who do not share his conviction that there would be no drug problem if there were no drug laws. If so, allow me to express my gratitude by specifying two questions that seem to me to embody the central challenges to a purely libertarian drug policy.

1. Assume for the moment that there exist some commodities that lead a disproportionate share of their consumers to create external costs and to violate the rights of others. This would be true, for example, of commodities whose consumption tended to reduce foresight, conscience, and willpower, and thus to increase impulsiveness. Should public policy toward the manufacture, distribution, and consumption of those commodities differ from public policy toward production, exchange, and consumption of ordinary commodities? If so, how? If not, why not?

2. Assume for the moment that there exist some commodities with technical characteristics that so compromise individual decision-making capacities as to cause many consumers to make poor decisions about them, as those same consumers later evaluate those decisions. Examples of such technical characteristics could be the potential to produce physiological dependency, a combination of immediate and self-evident rewards with deferred and obscure disadvantages, and a tendency to interfere with the judgment and self-control required to maintain moderation. Again, should public policy take these facts into account? If so, how? If not, why not?

Surely there is nothing self-contradictory about the descriptions above. If one can imagine such commodities and acknowledge that they may require special legislation (taxes, regulations, or prohibitions), the question of which, if any, actual commodities deserve special treatment, and what forms that treatment should take, is a matter for scientific investigation and policy analysis. It cannot be resolved as a matter of abstract right. It is thus no surprise that drug-policy reformers fall into what Sullum calls "the tinkering trap." There is a real problem to manage, and to the extent that it is not managed by prohibition it needs to be managed in some other way.

I do not argue that all drugs, or that only drugs, have the characteristics described above, though it seems to me fairly obvious that smokable cocaine is far more liable to them than corn flakes are. What I do maintain is that the drug problem (including the alcohol and nicotine problems) is not a figment of some demented statist's imagination, and that attempts to deal with it publicly will not, and should not, cease. The proper debate concerns the goals that such efforts ought to pursue, the limits on their efficacy, and how to reduce the extent of their unwanted side effects. Libertarians have a contribution to make to that debate, but to make it they will have to dismount from their hobbyhorse.

Mark Kleiman
Harvard University
John F. Kennedy School of Government
Cambridge, MA

Mr. Sullum replies: Neither I nor any legalization advocate I know claims that "there would be no drug problem if there were no drug laws." Rather (as I'm sure Mark Kleiman knows), we argue that "the drug problem" is in fact an amalgam of problems, many of which are caused or aggravated by prohibition itself, some of which constitute right violations that are properly prohibited, and some of which are beyond the purview of the state.

Kleiman's questions are provocative

Who was Felix Morley, and why is the Institute for Humane Studies awarding $7,500 in his honor?

Felix Morley was editor of the *Washington Post* from 1933 to 1940 and a winner of the Pulitzer Prize for distinguished editorial writing. In the *Post* and in subsequent writing, at the height of the New Deal and postwar anti-communism, Morley emphasized private property, voluntarism, and a noninterventionist foreign policy.

The Institute for Humane Studies is pleased to announce the sixth annual Felix Morley Memorial Journalism Competition. IHS will award

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to outstanding young writers whose work demonstrates an appreciation of classical liberal principles. In addition, five runner-up prizes of $500 are offered.

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Application Deadline: June 15, 1992

To obtain rules and application form, write to: Morley Competition, Institute for Humane Studies, George Mason University, 4400 University Drive, Fairfax, VA, 22030-4444.

and could easily be discussed at length. For the moment, I would merely suggest that he is wrong to think that the drug debate is or should be purely "a matter for scientific investigation and policy analysis." Even given the existence of the special commodities that he describes, questions about how to deal with them—in particular, whether to punish the many for the crimes of the few and whether to restrict people's liberty because of what they *might* do—cannot be answered without reference to political and moral philosophy. Indeed, the very definition of Kleiman's special commodities depends on factors, such as conscience and willpower, that cannot be empirically assessed by policy analysts and social scientists.

JACOB SULLUM'S REVIEW of the drug-war tragedy may benefit readers of REASON, but the persons who most urgently need exposure to such analysis are members of state legislatures. Most civil and criminal penalties are state penalties. Many state officials are uneasy about the drug war but afraid to say anything aloud. If drug-war skeptics would write to their state legislators, expressing support for winding down the drug war, progress could result.

Richard Lawrence Miller
Kansas City, MO

Feminist Faults

Ellen Frankel Paul's excellent review ("Big Girls Don't Cry," Dec.) mentions in passing something that demands comment: the radical feminist "cause" of "scrapping the 'canon' of Western culture." Western culture does have faults. But it enshrines a virtue unknown in the rest of the world: tolerance.

To be sure, most countries have official agendas for racial equality and women's rights, but these are creations of the Westernized intellectual and governmental classes. The communitarian reality is *sati*, the practice of burning widows alive still prevalent in India; it is widespread female circumcision in Africa; it is wholesale murder of tribal foes.

Most residents of Earth regard those not of their immediate affinity group as subhuman, and women as chattels. Only those who have internalized "the Western canon" feel bad about it.

Victor Milan
Albuquerque, NM

"BIG GIRLS DON'T CRY" offers a review of four books about feminism that no libertarian would be interested in reading. The first three authors recount their disillusionment with feminism in today's world and offer statist, collectivist answers. The fourth author, by the reviewer's portrayal, offers a surfeit of antilife bilge that supposedly fills the void of antifeminist criticism.

No other section of the book-review issue offered only books no one would want to read. Are we to believe this is because, as the reviewer claims, feminism has been "an enormous success" or "too successful," and therefore there is nothing worthwhile left to say? I don't believe that's true; I'm sure an organization such as the Association for Libertarian Feminists could suggest some valuable books to review.

Both the reviewer and Virginia Postrel, in her editorial of the same issue ("Poetic Injustice," Dec.), used the term *feminist* to refer to the views of liberal feminists. The same generalization appears in Michael Weiss's article on "feminist" attempts to bring about changes in the law ("Crimes of the Head," Jan.). Some of the views expressed there were not just liberal but extremely radical. As a libertarian feminist, I strongly object to surrendering the term *feminist* to liberals and leftists. It should be used only in reference to feminists of all viewpoints.

Sheila Christian
Oceanside, CA

Nuclear Defense

Though I was glad to read Oren Grad's clear-headed review ("Cold-Fusion Confusion," Dec.), I wish he had debunked a popular myth that has distorted most of the consideration of cold fusion's ultimate significance, namely that the perfection of nuclear fusion would precipitate a millenium of inexpensive, ecologically benign, essentially unlimited electrical power. There are at least three reasons why this dream is likely never to be realized.

First is the fact that nuclear fusion per se is incidental to such a goal. We have already "perfected" nuclear fission, and the proven reserves of uranium and thorium existing in this country alone would be sufficient to render nearly unlimited power for centuries. Yet this prospect has been substantially sabotaged by government regulatory practice and superstitious opposition by ecological agitators.

Second is the fact that, contrary to what has been advertised, nuclear fusion is just as "dirty" a process as nuclear fission, from the standpoint of radioactive-material generation. True, fusion reaction products are nonradioactive, but the intense neutron environment of a fusion reaction necessarily transmutes the materials from which the reaction vessel is constructed, which must be removed periodically, generating thousands of tons of radioactive waste. (This "first wall" replacement problem was recognized 20 years ago.)

Third is the fact that the major laboratories funded to perform fusion research have no intention of commercializing the process; they are government laboratories whose primary interest is the continuing research into the plasma physics of fusion reactions, for the purpose of better understanding and predicting the effects of thermonuclear weapons. The myth of "clean" fusion power is occasionally thrown to the public for justification of their budget.

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Despite these circumstances, cold fusion remains an unexplained phenomenon. It may possibly shed light on alternative nuclear reaction processes. It may even be the Holy Grail, as many would like to think. One thing seems assured: The necessary research appears to be at a level that would permit many modestly funded investigators to make great strides. This may explain the antagonism of those in the nationally funded laboratories, for if cold fusion is revealed to be a reality, their budgets may be in jeopardy.

Michael J. Dunn
Auburn, WA

What Causes AIDS?

Peter W. Huber writes that by refusing to take the junk science of AIDS seriously, wise judges help to put a stop to it ("Quoth the Maven," Nov.). Huber would be much surprised to learn the true state of AIDS junk science. Consider the following facts:

Centers for Disease Control reports show that more than 80 percent of individuals who have acquired antibody to HIV, presumably by infection with HIV, have not come down with AIDS diseases, even after 10 years. Each year, only 3 percent of those who have antibody to HIV get AIDS diseases; 97 percent do not. Chimpanzees experimentally infected with HIV develop high levels of the virus and produce antibody, but have not yet developed AIDS.

Although HIV can infect both sexes and the same percentage of men and women in the military have antibody to HIV, 80 percent of the AIDS cases reported by the CDC involve people 20 to 44 years old, 90 percent of whom are men. So the virus can infect everybody, but the diseases only appear in a specific group of men. Yet, on the basis of facts such as these, the general public has been told to accept the dogma that HIV causes AIDS, as announced by Health and Human Services Secretary Margaret Heckler in 1984 and supported by the AIDS establishment ever since.

While most of the individuals who come down with AIDS are homosexual men (about 20,000 per year), does this mean that homosexual contacts produce AIDS? Not likely. If we define a homosexual as one who has had one or more same-gender sexual contacts during the past year, there are about 2 million homosexual males in the United States. Yet only 1 percent of these come down with AIDS in any year; 99 percent do not.

In HIV-infected humans, a sharply reduced level of T- lymphocytes is regarded as the hallmark of the disease. The reduced level is thought to be caused by HIV. Yet the virus can be found in only 0.2 percent of T-lymphocytes and is active in only 0.01 percent of such cells. Where is the evidence that HIV causes any T-cell loss or any pathology at all after antibodies are produced?

In view of these unsupportable contentions, an international group of 35 biomedical scientists and others having special knowledge of this subject have joined together to form the Group for the Scientific Reappraisal of the HIV/AIDS Hypothesis. We have called for a thorough reappraisal of the existing evidence for and against the HIV hypothesis, to be conducted by a suitable independent group. We further propose that critical epidemiological studies be devised and undertaken. These critical studies are now needed more than ever because the papers most frequently cited to support the HIV hypothesis have been determined to be fraudulent on a number of counts after an 18-month investigation by the National Institutes of Health.

I suspect that the "experts" do not want the HIV hypothesis tested. After all, it is the basis of their research, and their funding. A carefully designed prospective study of HIV+ and HIV- individuals who are not on drugs or AZT probably would find the same rates of morbidity and mortality, thereby ruling out the HIV hypothesis. Although a death blow to the HIV hypothesis, such a result would clear the way so that the true cause of AIDS can be discovered.

As a biochemical scientist, I am most disappointed by the effect of AIDS on the integrity of science itself. Many of my colleagues know that something is very fishy about the HIV story, yet they refuse to look into the evidence (or admit they have) and say that they are "busy with other things" or that "the resolution of any problems is better left to the experts." Meanwhile, the research money rolls in from Washington, and scientists who know better remain silent.

Charles A. Thomas Jr.
Executive Committee Member
Group for the Scientific Reappraisal of the HIV/AIDS Hypothesis
San Diego, CA

Look for the Union Label

I agree with the main point of Thomas Hazlett's column on the proliferation of devices for the communication of ideas ("Do the Cheap Thing," Oct.). But the statement, "Forget about the union label on a Spike Lee project," is incorrect. One of my sons, a member of Local 52 of the IATSE, has worked with Mr. Lee on his last three or four projects and is employed as a grip on Mr. Lee's film biography of Malcolm X. Almost the entire crew belongs to the film production union.

Apprentices are the one exception: Mr. Lee has made an arrangement with the union to train young men and women on the job—a rather traditional way of handing on the knowledge of one's trade.

Lawrence D. Skutch
Westport, CT

Corrections: Artists' credits were inadvertently omitted from two features in the February issue. Arthur Matson did the illustration for "Life After Legalization," and Marc Michelon did the illustration for "DRAM Scam."

Also, Mark Fabiani is Los Angeles Mayor Tom Bradley's deputy; his name was misspelled in the January column "Just Privatize, Baby."

And the connective-tissue disease allegedly associated with breast implants is scleroderma; it was misspelled in the March editorial "Policy Bust."

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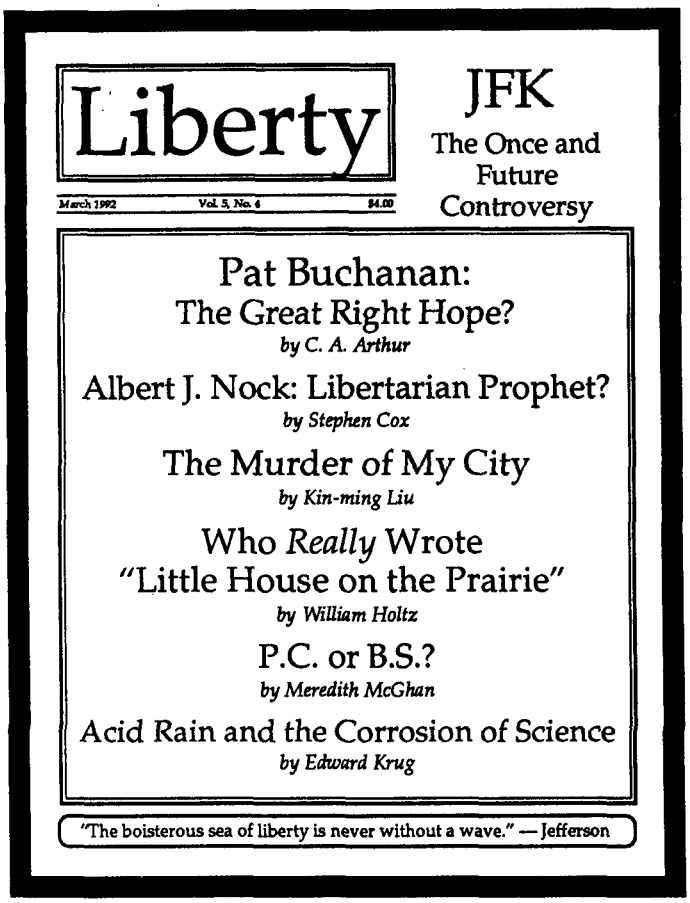
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TRENDS

The Road from Serfdom

Janusz Korwin-Mikke's followers—whom he describes as an assortment of "conservatives, libertarians, classical liberals, and Ayn-Randists"—are eagerly awaiting his new Polish journal *Capitalism*, scheduled for publication this spring. Korwin-Mikke, who was arrested and detained several times during the '60s for promoting freedom and free markets too loudly at the University of Warsaw, was a fixture in the Polish underground literary scene for years. Now that communism has gone the way of movable type, hundreds of publishers like Korwin-Mikke in the former communist countries are working hard to keep up with public demand for the writings of Western free-market economists.

Compared to Korwin-Mikke, Moscow economist Boris Pinsker is a relative newcomer to publishing. His business, Catalaxia Publishers, came out with its first book in December: The 50,000 copies of *The Economic Way of Thinking*, by Paul Heyne, sold out within weeks, and a second printing is under way. Backed by the Institute for Humane Studies at George Mason University, Pinsker plans to publish *The Fatal Conceit*, by F. A. Hayek; *The Calculus of Consent*, by James Buchanan; *The Firm, The Market, and the Law*, by Ronald Coase; *Human Action*, by Ludwig von Mises; and, eventually, the entire corpus of Hayek's writings.

Policy journals and scholarly publishing houses aren't alone in spreading the word about capitalism. *Novy Mir*, the most respected Russian literary-political magazine, serialized Hayek's *The Road to Serfdom* last fall. With a circulation near 3 million, *Novy Mir* may have the greatest success in teaching people about limited government, property rights, and unrestricted markets.

—Elizabeth Larson

Slow Growth?

When Canada adopted its national health-care system in 1967, the United States and Canada each spent about 6 percent of their GNP on health care. Twenty years later, the United States spent about 11 percent of its GNP on health care, but Canada spent only 9 percent.

So we can save money by emulating the Canadians? Not so quick, say John C. Goodman and Gerald L. Musgrave, authors of the National Center for Policy Analysis report, "Twenty Myths About National Health Insurance."

The problem with the comparison is that it is expressed in fractions. It doesn't show whether the difference is due to different changes in the numerators (health-care spending) or in the denominators (GNPs). In fact, almost all of the difference is accounted for by changes in the denominators. From 1967 to 1987, Canada's real GNP grew 74 percent, but U.S. GNP grew by only 38 percent. The real increase in per-capita health-care spending in both countries has been about the same—4.38 percent a year in the United States vs. 4.58 percent a year in Canada.

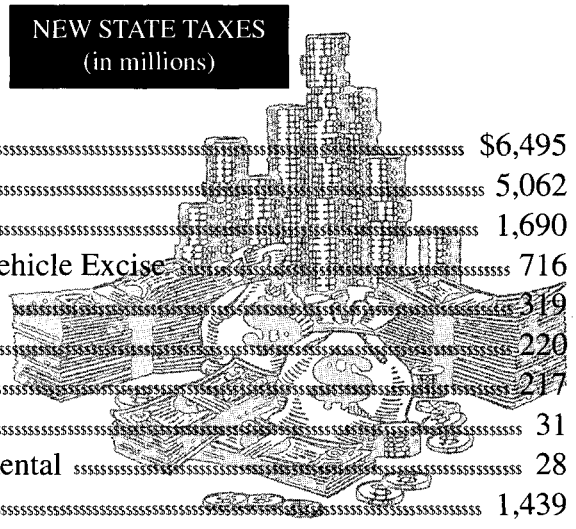
In recent years, Canada has been less successful in controlling costs than the United States. In the 1982 to 1987 period, the per-capita increase in Canada was 4.45 percent annually; in the United States it was 4.15 percent annually.

In this light, the alleged strength of Canada's health-care system—its ability to keep costs down—doesn't look so great.

—Charles Oliver

Taxing Predicament

From Augusta to Honolulu, Olympia to Tallahassee, state lawmakers are facing huge budget deficits. And what is the universal solution? Cut spending? Lay off state employees? No. Everyone's raising taxes. This year will see a record $16 billion in new state taxes nationally.



Source: *The Wall Street Journal*

Movin' on Up

In January, the Federal Reserve released a study that was widely trumpeted as demonstrating that the rich got richer and the poor got poorer during the 1980s.

But almost simultaneously the Republican members of Congress's Joint Economic Committee released a report that called into question the Fed's conclusion.

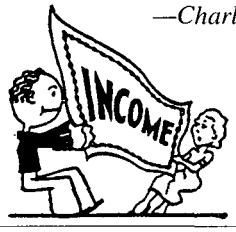
The Federal Reserve study divides the U.S. population into fifths, or quintiles, based upon income. Thus, the Fed reported that the average net worth of the bottom quintile declined between 1983 and 1989, and the average net worth of the top quintile increased during that same period.

The problem is that popular discussion of such studies implicitly assumes that the composition of those quintiles is fixed—that the people who were in the bottom quintile in 1983 were the same ones who were there in 1989.

But the Republican study shows that is not the case. Looking at census figures, the Joint Economic Committee found that between 1985 and 1986, one-third of all persons changed quintiles. In that same period, 45 percent of those in the middle quintile moved to another quintile. About one-fourth of those in the top quintile dropped down one or more quintiles, and about one-fifth of those in the bottom quintile moved up one or more.

Rep. Dick Armey (Tex.), the ranking Republican on the committee, argues that income mobility is a good measure of economic well-being. "After all," he notes in the report's executive summary, "what tells us more about our economy and the opportunities it presents: that the average income of the top quintile increased two percent in a given year, or that fully one quarter of those in the top quintile arrived there in the past year?"

—Charles Oliver



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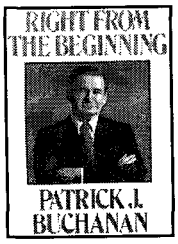

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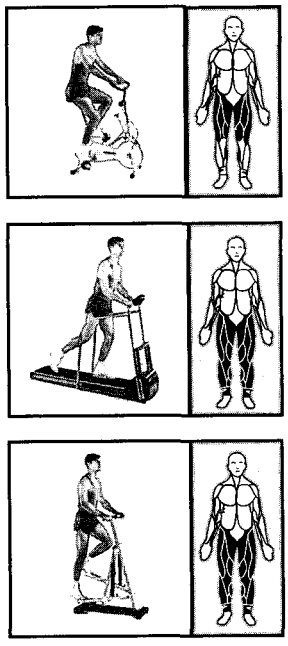

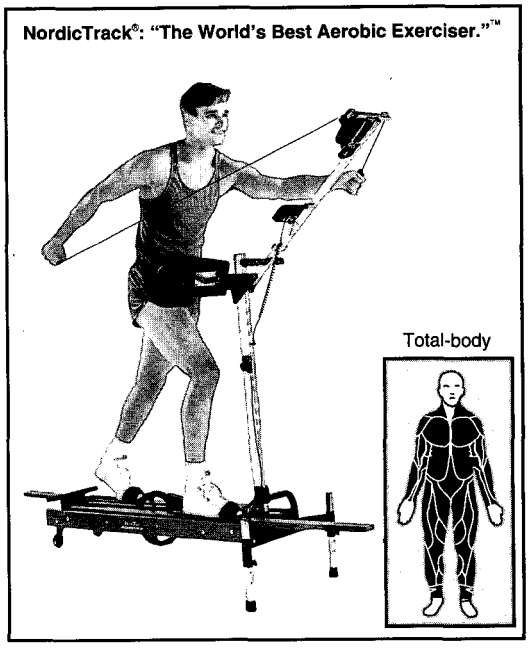

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BALANCE SHEET

Assets

Yankee Clipper. How Massachusetts Gov. William Weld attacks a $1.6-billion budget deficit: tax cuts. (See "Bigger or Better?", Nov.) Weld wants to slice the state income-tax rate from 5.95 percent to 5.75 percent and dump the capital-gains tax on assets held longer than six years. He expects his cabinet to "deliver the same services...at a 10 or 20 percent cut."

Rights Turn. In an early opinion, *Lechmere v. NLRB*, Justice Clarence Thomas reasserts that shopping centers are private property: Center owners can charge labor organizers (and presumably others) with trespassing if they distribute literature without permission.

Contract Job. Florida will contract out management of three public-school districts to a for-profit company. Minneapolis-based Education Alternatives will take care of maintenance, custodial, and food services. "We [aren't] in competition with the public schools," company president David Bennett tells *Education Week*. "We want to *be* the public schools." Privatization-by-stealth could sweep the nation.

Maiden Voyage. Six new airlines want to enter the decimated U.S. market. Are they crazy? *U.S. News* suggests not. Unlike Pan Am and Eastern, who tried to fly everyone everywhere, the new carriers will serve a few routes for rock-bottom prices. One will fly only between Ft. Lauderdale and New York City for $125 each way—$300 cheaper than the big boys. And with experienced pilots out of work, the new carriers can offer seasoned flight crews.

Liabilities

Car Talk. The Congressional Automotive Caucus (yep) proposes a $2,000 tax credit for people who buy new American cars. But what's "American"? The feds deem the Ford Crown Victoria foreign because only 73 percent of its parts are made in the USA. Meanwhile, Chrysler builds Lamborghinis, Ford Jaguars, and G.M. Lotuses. Wait. This could be a *great* loophole. Nothing qualifies.

Fare Play. New York Mayor David Dinkins plans to issue 40,000 new taxi licenses. But new medallion holders can't take fares into Manhattan—and the mayor will spend six times more money to prosecute the illegal "gypsy" cabs on which poorer neighborhoods rely. Maybe he wants to boost subway ridership.

Public Enemy. Warning labels appear on most recordings with explicit lyrics. Not good enough, says Guilderland, New York, Police Chief James R. Murley. After a parent gripes about a cassette her daughter bought, Murley tells shop owners it may be illegal to sell labeled records to minors. "We're certainly not looking to violate the First Amendment," he tells *The New York Times*. But store owners get the message and pull the albums off their shelves.

Communication Breakdown. A New Jersey jury creates a new category of defamation—the unflattering job review. After black accountant Margaret Cary got a bad performance review, AT&T laid her off. She sued, claiming race and sex discrimination. The jury found no bias. But jurors said AT&T defamed Cary in the review and gave her half a million dollars in damages. If upheld, the decision could end reviews.

—Rick Henderson

Proscriptive Prescription

For many women, getting a doctor's prescription for birth-control pills or a diaphragm is simply a chore. But for others, especially poor women and teenagers, the cost of the medical exam and the prescription can be prohibitive. A growing movement among women's groups and family-planning organizations is seeking to improve access to birth control by making both the Pill and the diaphragm available over the counter.

Fueling the movement is a recent report from the National Research Council and the Institute of Medicine that the number of abortions in the United States (about half of the 3.5 million unplanned pregnancies every year) could be significantly reduced if highly effective contraceptives were more readily available.

"I don't think anybody knows how many pregnancies occur because of delayed refills, or just not getting pills on time. But it is *really* a lot. Anyone who works at an abortion clinic can tell you that," Felicia Stewart, a Planned Parenthood physician, told *Ms.* magazine.

Yet for many women's-health advocates, over-the-counter birth control raises the specter of health risks. While the only problem with diaphragms is getting the right size, the issue of oral contraceptives is trickier, they say.

Today, most physicians require an annual checkup before prescribing the Pill or renewing a prescription. Making the Pill available without a prescription would place the responsibility for preventive screening on the individual woman. Supporters of the prescription requirement argue that some women might end up with serious health problems that could have been avoided through such screening.

Opponents say that screening is a separate question and that giving women more birth-control options can only help. A Planned Parenthood task force is studying the issue and expects to make a recommendation by the end of the year.

—Elizabeth Larson

Be Vewy, Vewy Quiet

"From the perspective of newsletter publishers, 1991 was a very bad year," says Lee Levine, lawyer for the Newsletter Publishers Association. Two suits filed last year, says Levine, have had a chilling effect on the willingness of small publishers to tackle controversial subjects.

In one case, shoemaker L.A. Gear Inc. sued *Sporting Goods Intelligence*, a Pennsylvania-based newsletter. L.A. Gear attacked an article predicting an earnings decline for the sneaker manufacturer. The suit was settled out of court.

In the second case, National Life Insurance Co. alleged that a newsletter published by Phillips Publishing Inc. libeled the insurer in an article rating insurance companies' debts. The suit is currently proceeding.

Libel-defense lawyer Bruce Sanford told *The Wall Street Journal* that savvy plaintiffs have learned that big news organizations often pick up stories from small publications. Intimidating small publications can keep bad news from spreading.

—*Charles Oliver*

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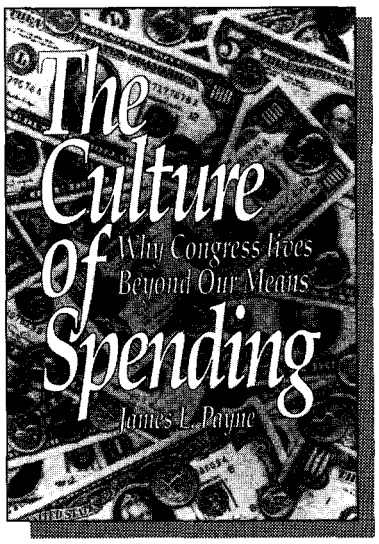

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BRICKBATS

Responding to accusations that it supports terrorism, the government of Libya has proposed steps that the United Nations should take to eliminate the causes of terrorism. These include a ban on hunting, boxing, and wrestling, as well as reversing the flow of rivers so that their waters can be used for irrigation instead of flowing into the sea.

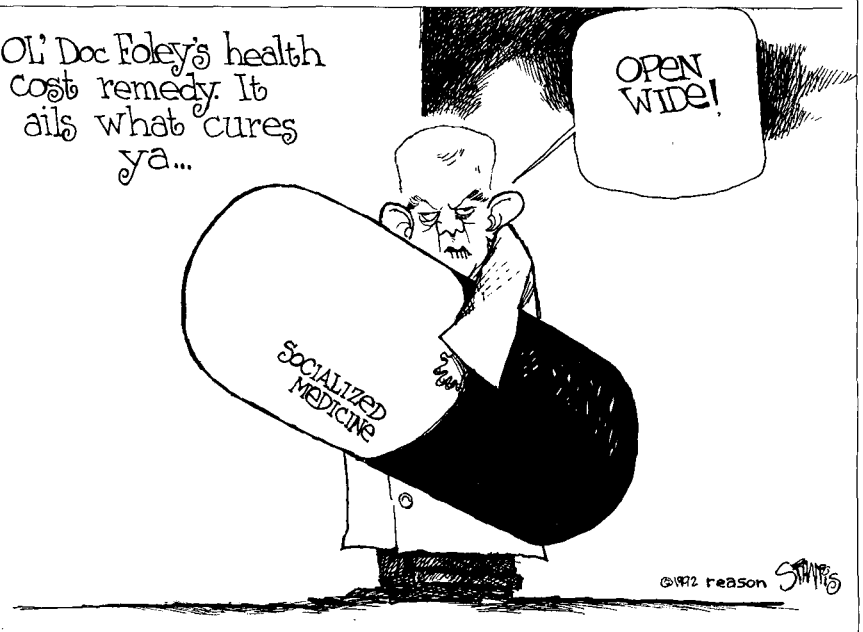
It's tough to be politically correct. Just ask the people at the Harvard Divinity School. Doing its bit to save the planet, the school placed recycling bins around campus to collect paper. The bins were originally labeled "white" and "colored." Someone anonymously relabeled the latter bins "paper of color." *Penthouse* magazine reports that the school then relabeled all the bins "bleached paper" and "dyed paper."

George Bush did his damnedest to act like a good ol' boy while campaigning in New Hampshire. But he just couldn't get it right. At one stop he meant to quote the lyrics of a song by the country group the Nitty Gritty Dirt Band. Instead, he referred to the Nitty Ditty Nitty Gritty Great Bird. The Bush campaign so far brings to mind another country group: Asleep at the Wheel.

Voters turned San Francisco Mayor Art Agnos out of office last November. But Agnos isn't out of a job. His old buddy state Assembly Speaker Willie Brown immediately gave him a $92,465-a-year post as state unemployment commissioner. Agnos described the position as a "part-time job."

In California, Malibu has granted honorary citizenship to all whales and dolphins. At the very least that should raise Malibu's average I.Q.

Ever-vigilant Singapore has banned the import, manufacture, and sale of chewing gum and bubble gum. Those violating the law face a fine of as much as 10,000 Singapore dollars (about $6,000 in U.S. currency).



In New York, state Sen. Guy J. Velella wants to outlaw pencils shaped like hypodermic needles. Velella thinks the novelty items will promote drug use among children. This guy will probably flip if he goes through the contents of one of those plastic toy doctor's kits.

In Charles Town, West Virginia, a 670-pound man was sentenced to home confinement after a drug conviction but has been freed on bond after authorities failed to find an electronic monitoring device, usually contained in an anklet, big enough for him.

A Little League coach in East St. Louis fired a gun at a 16-year-old umpire who called one of his players out at home plate.

Shirley MacLaine says that in another life she was married to New York City Council President Andrew Stein. Rumor has it that Stein wants to be New York's mayor. The MacLaine connection could help him lock up that all-important 10,000-year-old-Atlantean vote.

A bill under consideration by the Florida legislature would make it illegal for professional wrestlers to touch or threaten a referee or to fix the outcome of a match. The bill also requires the state athletic commission to lift the license of any promoter who consistently makes matches between opponents of unequal ability and skill. It would be so much easier for lawmakers to say, "Professional wrestling as it has existed for over 120 years is banned in the state of Florida."

Political leaders in Washington state have enticed a group of Japanese investors to buy baseball's Seattle Mariners. The current owner has said he might move the franchise, but the Japanese group promises to keep the team in Seattle. If the Japanese think America makes lousy cars, wait'll they take a look at the Mariners.

—Charles Oliver

THE Public Interest

EDITORIAL OFFICES: 1112 16th Street, N.W., Suite 530
Washington, D.C. 20036

EDITORS: IRVING KRISTOL • NATHAN GLAZER

MEMORANDUM

To: **Irving Kristol** and **Nathan Glazer**
From: Staff
Re: Ideas for upcoming **PUBLIC INTEREST** ad campaign

Here are some possible advertising themes. The only problem will be deciding what to focus on—we really have an embarrassment of riches to work with.

Press mentions

We continue to receive a tremendous amount of press coverage. In just the past year or so, articles from **THE PUBLIC INTEREST** have been repeatedly cited or excerpted in the ***Washington Post***, the ***New York Times***, and the ***Wall Street Journal***. In fact, the provocative piece we ran last spring on the WIC food program was featured in all three papers within a one-week period.

Add to this the attention we've received in such diverse venues as the ***New Republic***, ***New York*** magazine, ***Science*** magazine, the Capitol Hill newspaper ***Roll Call***, and major metropolitan newspapers around the country, and our impact on America's public-policy debate should be obvious to potential readers.

Contributors

Probably our strongest suit. An ad should stress that we publish informative, readable articles by leading thinkers on the key issues of the day.

A very partial list of some notable contributors to **THE PUBLIC INTEREST** might include: **Fred Barnes, Daniel Bell, Walter Berns, Gordon Crovitz, Terry Eastland, James Fallows, Martin Feldstein, Chester Finn, Jr., Suzanne Garment, Donald Kagan, Charles Krauthammer, Nicholas Lemann, Seymour Martin Lipset, Lawrence Mead, Daniel Patrick Moynihan, Charles Murray, Richard John Neuhaus, Norman Ornstein, Isabel Sawhill, Thomas Sowell, Herbert Stein, Andrew Sullivan, George Will, and James Q. Wilson.** (Not to mention both of you, of course.)

Readers and testimonials

Our ad should probably point out that **THE PUBLIC INTEREST** is required reading in political science departments and public-policy schools around the country. Then again, we don't want to give the false impression that our readers are all academics. We could explain that top policymakers, journalists, and plain old concerned citizens turn to **THE PUBLIC INTEREST** when they want clear-headed analysis of issues like health care, education, housing, and inner-city crime.

It might be worth underlining our reputation for shattering conventional wisdom. Maybe we could use that quote from ***INC.*** magazine saying **THE PUBLIC INTEREST** "has published the most levelheaded and myth-piercing articles to be found anywhere on subjects ranging from welfare reform to government inefficiency."

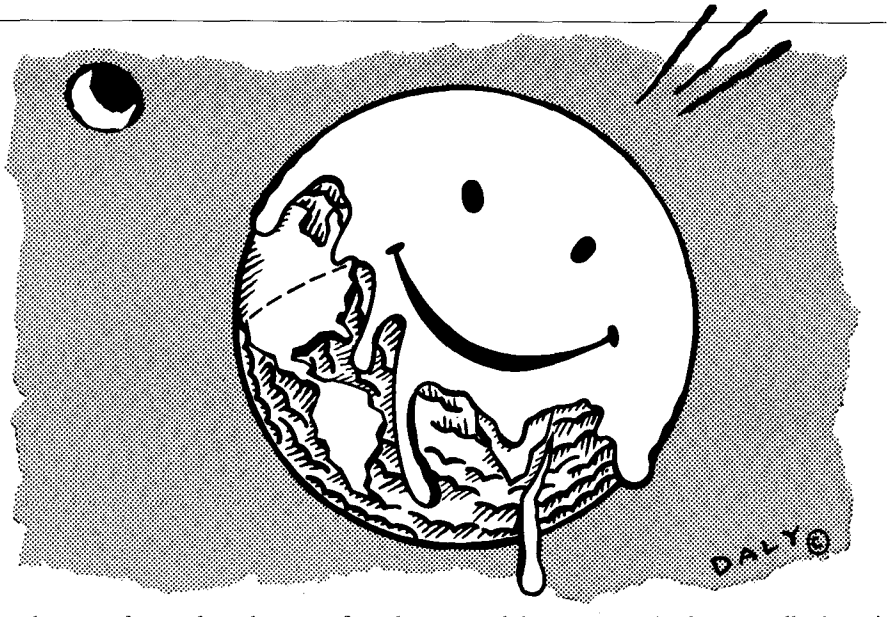
Ahead of the curve

Finally, we should explain that reading **THE PUBLIC INTEREST** is the ideal way to keep abreast both of enduring social-policy debates and of what the new issues will be.

Any ideas on what to use? It seems a shame to waste any of this material. Too bad we can't put it all in one ad!

THE MOBILE SOCIALIST STATE

BY TODD SEAVEY



Anyone who grew up with Godzilla movies has to feel joy upon hearing real-world news reports about large, menacing things moving toward the United States, whether it's those swarms of killer bees and fire ants we've been hearing about since the mid-'70s or that 1,000-square-mile hunk of Antarctica that broke off recently and started "threatening shipping lanes" (a radio reporter's words, not mine). And of course there are fascinating domestic threats such as kudzu, a vine imported from Asia to Georgia, where it grows at a rate of two feet per day and now covers an area the size of the state of Maryland (suggesting all sorts of cheap real-estate schemes), but such homespun juggernauts are beyond the scope of this essay.

The threat I am concerned with is a foreign invader that has been moving steadily closer to the United States since at least World War II: the model socialist state. In a display of plate tectonic activity that makes that Antarctica thing look paltry, the entire ideal socialist state—as defined by the sympathies of Western leftist intellectuals—has moved from Russia, through Central Europe, north into Sweden, across the Western European welfare states, across the Atlantic, up through Latin America, and into Canada (judging by recent praise for Canada's taxes and socialized medicine in the *Utne Reader*), where it sits poised on our northern border.

Is this a frightening new form of "creeping socialism"? Or is it that leftists keep changing their minds about what they want, gradually diminishing their vision of a centralized state as it becomes more and more apparent how unworkable that vision is? It's tempting to conclude the latter, although it would be wrong to assume everyone on the left *has* changed his mind: When leftist philosopher Michael Walzer spoke at Brown University last year about the future of social democracy and suggested that society needs some form of market as a foundation, a student in Brown's chapter of the Young Communist League shook his head, smiled, and said with regret, "Reformist."

For the less purist, fondness for one socialist state over another is guided, rationally enough, by which one appears to be functioning best. This is an improvement over the pre–World War II days when the Soviets made positive impressions on many Western intellectuals through such devices as parades and brass bands (like the one that welcomed a visiting George Bernard Shaw). Socialist states that are no longer "hot" might want to keep such tactics in mind, though. The socialists were recently voted out of power in Sweden, but perhaps they would have garnered more support from foreign intellectuals with a well-timed benefit rock concert (perhaps featuring singer Billy Bragg performing his catchy hymn to murderous Maoist policies, "Great Leap Forward").

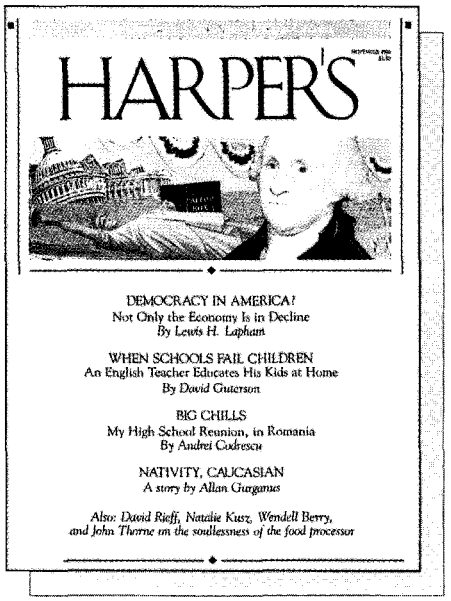
Most likely, the geographic trend I've noted will end when the model socialist state finally moves inside the United States itself and the accompanying socialist vision becomes so watered down no one bothers to talk about it any more. The final geographic leap, then, may be into America's Northeastern liberal states (despite the ongoing revolutions there, such as the uprising against Lowell Weicker's introduction of an income tax in Connecticut, that make them shaky as models of domestic tranquility). Or the Great Leap Homeward may be into the "ecotopia" of the Northwest states, or into whichever state comes closest to socializing health care.

When this does happen, be prepared not only for leftists to say, "State X is a model of social democracy, government cooperation with working people, etc." but also for them to say, "This is the kind of ideal we've been promoting all along"—even if they were actually hardcore Marxists who were talking about the positive social role of the KGB two decades ago. Through this device, they not only retroactively whitewash the history of Western intellectual support for socialism (once again) but manage to give socialism credit for creating all the good things in life that State X will have in abundance precisely because the model socialist state isn't as socialist as it used to be.

Todd Seavey is a writer in New York City.

TOM DALY

It's not homework.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Just because a magazine is intelligent and challenging doesn't mean reading it has to be hard work.

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All Creatures Great

Species preservation out of control

By Charles Oliver

In Washington state, logger Dean Hurn is worried. He could be among the estimated 40,000 to 100,000 timber workers who will lose their jobs to protect the Northern spotted owl.

In Riverside County, California, developer William Lyon is upset. In a place where new home prices start in the six figures, the sites for the 100,000 new low-cost single-family homes he and other developers were going to build have been ruled off limits to protect the Stephens kangaroo rat.

In Florida's Polk and Highland counties, 600 landowners can't build the homes they planned because their property is home to the Florida scrub jay. In these and many other cases, the Endangered Species Act has halted the plans and dreams of thousands of ordinary Americans.

The act is up for renewal this year, and one might expect a piece of legislation that has harmed so many people to be itself endangered, or, at the very least, the subject of a fierce battle. One would be wrong.

"No one wants to be seen as anti-environment," says Cato Institute environmental analyst R.J. Smith. "I've been in meetings with these guys [leaders of affected industries], and they make it clear they aren't going to oppose the act, just try to finagle some special exemption for themselves."

The Endangered Species Act is sacrosanct because environmentalists and their friends inside the Beltway have convinced almost everyone that massive species extinction is occurring, that it threatens to destroy entire ecosystems, and that only the extreme measures legislated by the act can prevent an ecological catastrophe. The problem is that none of these assertions is supported by hard facts.

Stephens Kangaroo Rat

& Small.

Mount Graham Red Squirrel

The government hasn't even developed recovery plans for 224 of the 581 species it lists as endangered or threatened.

To understand the Endangered Species Act, one must look at its origins. In 1964, the U.S. Department of the Interior established the Committee on Rare and Endangered Wildlife Species to study the state of North American wildlife. Two years later, the committee reported that 83 native species were endangered. But the committee noted that it based its list on incomplete data and that there was disagreement among the members about which species to list.

"One fish species, the humpback chub, was identified as endangered even though its fecundity, estimated numbers, reasons for decline, former distribution, and potential for captive breeding were all unknown," reported political scientist Richard Tobin in his book *The Expendable Future*.

Despite the lack of data, Congress quickly made it illegal to "pursue, hunt, shoot, capture, collect, kill, or attempt to pursue, hunt, shoot, capture, collect or kill" the listed animals within any area of the National Wildlife Refuge System.

For the next half decade, federal policy on endangered species was mainly confined to expanding this initial list and preventing the hunting of endangered species on federal land. But following the first Earth Day in 1970, environmentalists placed enormous pressure on Congress to do more to stop the perceived loss of species. This campaign bore fruit in the 1973 Endangered Species Act, which gave the U.S. Fish and Wildlife Service sweeping powers to protect endangered species on private as well as public lands.

Congress has modified the act several times over the last two decades. Mostly, these modifications have been procedural changes in the listing and classification of endangered species. In 1988, Congress made the biggest change, extending full protection of endangered plants to those on private land.

Though the act is lengthy and verbose even by modern legal standards, a few key passages sum up its essence. First, the law is supposed to provide a "means whereby the ecosystems upon which endangered species and threatened species may be conserved." Effectively, this provision switches the focus from the species themselves to the ecosystems in which they live; thus, the battle in the Pacific Northwest isn't really over the Northern spotted owl but over the millions of acres that Fish and Wildlife has determined must be declared off limits to logging and development for the owl to survive.

The act also directs the Fish and Wildlife Service to use "all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary." So Fish and Wildlife must protect any species it finds endangered, and it has wide-ranging power to do whatever it feels necessary to achieve its goals, regardless of the costs.

Although the act also calls for Fish and Wildlife to enact plans to recover endangered and threatened species, the agency has been much more interested in adding new species to its list. Fish and Wildlife hasn't even developed recovery plans for 224 of the 581 species it lists as endangered or threatened.

A study released in late 1991 by the National Wilderness Institute found that Fish and Wildlife had delisted only five species: the alligator, three animal species from a U.S. protectorate near the Philippines, and a plant called the Ryberg Milk-Vetch. And NWI says that the four animal species may have been on the list in the first place only because they were undercounted. Indeed, the agency itself argued last year in a report on its progress in enforcing the act that "removal from the list is not a reasonable goal for all endangered species."

Meanwhile, there are 3,000 more species that Fish and Wildlife feels may "warrant listing" following further review. This means that the agency will almost certainly add millions more acres to the 87 million it currently controls.

Ecologists have argued that only such sweeping powers can stave off the threat of massive species extinctions caused by man's activity. In his 1979 book *The Sinking Ark*, naturalist Norman Myers estimated that the world

RIK OLSON

had lost one species per day during the 1970s and would lose one per hour during the 1980s. A year later, the *Global 2000 Report to the President*, relying in part on Myers, estimated that by the end of this century deforestation and industrial activity could wipe out 15 percent to 20 percent of all the planet's species. "This means that of the 3-10 million species now present on the earth, at least 500,000-600,000 will be extinguished during the next two decades."

In 1981, Thomas Lovejoy opted for the higher of these estimates, predicting 20 percent of all species would be lost. But Paul and Anne Ehrlich went even further, stating that half of all species would be extinct by the year 2000. Ten years later, Paul Ehrlich seemed to revise that estimate; in 1991, he co-authored an article in *Science* with E.O. Wilson that estimated that 25 percent of all the earth's species would be extinct by the year 2041.

While environmentalists may disagree over the exact numbers, they all agree that the rate of species extinction is tremendous. But there's a problem with *all* of the estimates.

"They're all frauds," says economist Julian Simon. In 1984, he and political scientist Aaron Wildavsky examined the predictions of the *Global 2000 Report*. They found that it provided no data for its predictions of massive species extinction; indeed, they characterized the report's estimates of then-current rates of species extinction as "pure guesswork." Simon and Wildavsky also examined the predictions of Lovejoy, the Ehrlichs, and Myers, and found similar guesswork.

In the intervening years, environmentalists have produced new computer-generated estimates of species extinction, but none of the new techniques have changed Simon's mind. The models, he cautions, are only as good as the data they are based upon. "I'm still looking for the data," he says.

For years, Simon and Wildavsky were all but alone in their skepticism. But recently, even some in the scientific community have begun to question the predictions. In an August 1991 article in *Science*, Charles C. Mann noted that "only four of 22 predictions came with sufficient explanation to permit independent examination. All of the rest provide anecdotal support—or none at all. Even one prominent conservationist—who demanded anonymity, explaining that 'they'll kill me for saying this'—admitted that 'the lack of data does worry me.' He then added: 'I'm absolutely sure we're right, but a gut feeling isn't much backup when you're asking people all over the world to change their lives completely.' "

And the U.S. Office of Technology Assessment claims that the wide discrepancy in predictions calls "into question the credibility of all such estimates."

Environmentalists often cannot even agree on how many species there are to begin with. In 1980, the *Global 2000 Report* stated that there were 3 million to 10 million species on earth. In 1991, Ehrlich and Wilson argued for 100 million species. Ehrlich and Wilson also hold that up to 25 million species may become extinct by the middle of the next century. That's more than double the number of species thought to exist 10 years earlier.

Part of the problem is estimating the number of species we haven't identified. Taxonomists have identified only around 1.4 million species. But Ehrlich, Wilson, and others argue that there are tens of millions of unidentified species, particularly in the Amazon rain forest. (Indeed, they also argue that that is where most species loss occurs.) Simon responds that even their estimates of existing undiscovered species are pure guesswork.

Wilson told *Science* that, while "of course" more data are needed, the extinction problem, particularly in tropical forests, is "absolutely undeniable." There are, he said, "literally hundreds of anecdotal reports."

Still, there is an even more fundamental problem, one with a direct effect on the enforcement of the Endangered Species Act. "There is considerable disagreement over what is a species," says Wildavsky. "For example, some taxonomists say there are eight species of squirrels, others say there are as many as 87. The disagreements can be quite large."

Says Montana State University biologist David Cameron, "Most people think that species simply exist and that scientists just find and identify them, that there are some sort of Platonic ideals that each separate species conforms to." It isn't quite that simple. "Evolutionary theory teaches that life is in a constant process of adaptation and evolution. Scientists are thus presented with tremendous diversity and variety in the creatures they study."

Consequently, scientists need some convenient way to catalog plants and animals to facilitate their studies. Going back to Linnaeus, taxonomists have grouped plants and animals together based upon common features: color, size, proportion of body parts. Those that have many similar features and have the ability to interbreed are grouped together as a separate species.

"Among the individuals in a species there is wide variety in features," says Cameron. "At the fringes, it may be difficult to tell whether an individual is a member of one species or another, related one."

So scientists can disagree over when two groups of animals are different enough to be called separate species. Modern genetic testing and refinements in evolutionary theory have reduced such disagreements, but they haven't been eliminated because the classification of species ultimately depends upon the judgments of taxonomists.

"In a sense, the criteria [that distinguish one species from another] can be arbitrary. In some of the butterflies that I study, species are distinguished from one another solely by the number of spots on their wings," says Cameron. "We try to pick those features that seem most relevant."

Note that the high-school definition of species—two individuals are of the same species if they are able to produce viable, fertile offspring—isn't the one that scientists use. "Two perfectly good species can be brought together and successfully hybridized—red wolves and coyotes for example. But we still would want to call them separate species," says Cameron.

Northern Spotted Owl

The law protects "subspecies" of even common animals. When you boil down the technical jargon, a subspecies is a race.

But the Endangered Species Act offers a definition of species that differs both from that given by your high school biology teacher and from that used by biologists. The act states, "A 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds in nature."

Several decades ago Harvard zoologist Ernst Mayr offered what is now the standard definition of subspecies: "a geographically localized subdivision of the species, which differs genetically and taxonomically from other subdivisions of the species." In other words, a subspecies is a race.

The Northern spotted owl, for example, is, in fact, not a species but merely a subspecies of the spotted owl. The spotted owl is fairly common all along the Pacific coast. But the spotted owls of the Pacific Northwest differ from those of California in that they are larger, darker, have a rather different proportion of body parts, and have somewhat different markings. Where the ranges of the two meet, however, the birds look very similar. In the Northern Sierra mountains, even an expert might have trouble distinguishing a Northern spotted owl from its California cousins.

In practice, the subspecies and "distinct population" provisions of the law mean that while the species as a whole may not be endangered, some parts of it may be listed as endangered or threatened. Thus, only the Northern spotted owl is now listed. Scientists may one day find that development in California's Santa Monica mountains threatens a population there, so it too would get federal protection. But there could still remain thousands of unthreatened, unprotected spotted owls along the rest of its range.

Indeed, as of July 1991, 33 of the 51 U.S. mammals listed as endangered or threatened were actually subspecies. This includes such controversial animals as the Mount Graham red squirrel and the Stephens kangaroo rat. And 31 of the 60 birds listed were actually subspecies, including the Northern spotted owl.

But most biologists now argue against the formal recognition of subspecies or races. Again, remember that the purpose of taxonomical classification is to make the biologists' job easier, to help them easily classify the things they study. Since subspecies may differ in only one characteristic, and since the variability within any one species can be great, for any one species there can be dozens—perhaps hundreds—of subspecies, depending upon what characteristic one looks at. The concept of subspecies actually makes the cataloging of life more difficult, not easier.

Nonetheless, the biologists with whom I spoke support the Endangered Species Act's broad definition of species. Humboldt State University's Rocky Guitterez, a biologist studying the Northern spotted owl, argues that if we wait until an entire species is endangered to protect it, it may be too late to save it. The most effective way to protect a species is to act early and protect those parts that are endangered. Hence the need to protect "distinct population segments" as well as subspecies. Others point out that to scientists the most interesting members of a species may be those that are geologically separated or different in some way from the larger population.

"I think [the act's broad definition of species] says that biological diversity is important, and we don't want to be too narrow in our protection of it," says Montana State's Cameron.

But is it possible to be too zealous in our protection of biological diversity?

"Well, every individual produced by sexual reproduction is unique, so every death represents a loss of diversity. But we obviously shouldn't even try to save every individual organism, even if we could," says Cameron.

The limits we place on protecting diversity depend upon our reasons for valuing it. Perhaps the most commonly heard reason for protecting endangered species is that nature is a delicate, interconnected web, and the loss of any one species can destroy an entire ecosystem. As Paul and Anne Ehrlich stated in their book *Extinction*, "This argument is that other species are living components of vital ecological systems (ecosystems) which provide humanity with indispensable free services—services whose substantial disruption would

lead inevitably to a collapse of civilization."

To support drastic action to prevent an ecological catastrophe, the Ehrlichs marry this argument to their thesis that species are becoming extinct at a massive rate. If the world were indeed threatened with the loss of 20 percent to 50 percent of existing species, it very well could lead to the destruction of entire ecosystems. But as we have seen, there's no reason to believe that species are declining at alarming rates.

But could the loss of a few species produce an environmental disaster? Environmentalists sometimes argue that because all parts of an ecosystem are connected, the loss of one species can affect all others. For example, the loss of the Northern spotted owl could lead to an increase in the numbers of the animals it preys on, which, in turn, could lead to changes in the plants and animals they eat and so on throughout the food chain. But changes aren't necessarily disastrous.

"I'm concerned about the loss of diversity. We should be very cautious about how our actions affect the environment," says Cameron. "But I don't think nature is quite as fragile as some people believe."

In a chapter of the E.O. Wilson-edited book *Biodiversity* titled "Why Put a Value on Biodiversity?", biologist David Ehrenfeld acknowledges, "We do not know how many species [of plants] are needed to keep the planet green, but it seems unlikely to be anywhere near the more than quarter of a million we have now. Even a mighty dominant like the American chestnut, extending over half a continent, all but disappeared without bringing the eastern deciduous forest down with it. And if we turn to the invertebrates, the source of nearly all biological diversity, what biologist is willing to find a value—conventional or ecological—for all 600,000-plus species of beetles?"

Indeed, Ehrenfeld admits that "the species whose members are fewest in number, the rarest, the most narrowly distributed—in short, the ones most likely to become extinct—are obviously the ones least likely to be missed by the biosphere. Many of these species were never common or ecologically influential; by no stretch of the imagination can we make them vital cogs in the ecological machine."

Mind you, Ehrenfeld still wants to protect endangered species and preserve biodiversity; he's just forced to admit that the "practical" arguments for doing so are weaker than environmentalists believe.

Instead, he argues that it is inherently wrong to destroy biological diversity. "The very existence of diversity is its very own warrant for survival. As in law, long-established existence confers a powerful right to a continued existence. And if more human-centered values are still deemed necessary, there are plenty available—for example, the value of the wonder, excitement, and challenge of so many species arising from a few dozen elements of the periodic table."

But death, extinction, and change are natural. To attempt to preserve every species is to try to end the process of evolution.

As biologist Norman D. Levine wrote in an article in the journal *BioScience*, "Perhaps 95% of the species that once existed no longer exist....What species preservers are trying to do is stop the clock. It cannot and should not be done. Extinction is an inevitable fact of evolution. New species continually arise, and they are better adapted to their environment than those that have died out....Would it improve the Earth if even half of the species that have died out were to return? A few starving shipwrecked sailors might be better off if the dodo were to return, but I would not be. The smallpox virus has been eliminated, except for a few strains in medical laboratories. Should it be brought back?"

Ehrenfeld's logic dictates that it should, but few people would take it that far. I doubt that Ehrenfeld would. And that highlights a central flaw in the Endangered Species Act. Almost all of us value biological diversity. We may have different reasons for valuing it, and we may place different values on it, but we all would want to preserve some diversity, if only because it makes the world a more interesting place.

But we also value other things: jobs, housing, privacy, the freedom to do what we want when we want with what we own—all of which are threatened by enforcement of the Endangered Species Act.

The Endangered Species Act enforces the views of those few people who value diversity above everything else. The problem is that they are not the ones who are paying the price for this enforcement. The cost falls instead on loggers in Washington, would-be homeowners in California and Florida, and taxpayers and property owners all over the United States.

We should repeal the Endangered Species Act. And environmentalists who really want to preserve diversity should be willing to pay for it. If, for example, the Stephens kangaroo rat is valuable, the Sierra Club or the Audubon Society should buy the land it lives on and turn it into a nature preserve. (This strategy of buying land specifically to preserve habitat for endangered species is exactly what the Nature Conservancy has pursued for years.)

If those who want to preserve biological diversity have to pay for their choices, rather than force the costs onto someone else, they will discover that people really do have to make trade-offs between conflicting values and that it really isn't possible—or desirable—to protect every species of beetle on the planet. ■

Charles Oliver is assistant editor of REASON.

Stephens Kangaroo Rat

SECRETS

DO STRANGERS WITH COMPUTERS KNOW TOO MUCH ABOUT YOU?

BY JACOB SULLUM

In April 1990, Lotus Development Corp. proudly announced the release of Marketplace: Households, "a new desktop information product for Apple Macintosh personal computers that allows any business person to perform sophisticated sales prospecting and market analysis." Marketplace: Households combined information about 120 million U.S. consumers, stored on compact disks, with software that would have allowed users to select lists of names and addresses based on nine marketing criteria.

Priced at $695 (plus additional fees for lists), the data base would have provided small businesses and nonprofit organizations with information that had previously been available only to large companies. For example, the owner of a trendy new restaurant could get a list of young, affluent people living near his establishment. A local political organization could target older, married homeowners in a given neighborhood. Marketplace: Households was scheduled to hit computer stores in the fall.

It didn't. After unveiling the product, Lotus received some 30,000 letters of complaint, many of them by electronic mail. Privacy advocates, including the American Civil Liberties Union, condemned the data base. "It simply shouldn't be allowed on the market," said Marc Rotenberg, Washington director of Computer Professionals for Social Responsibility. In January 1991, Lotus announced that it was canceling the information package.

Meanwhile, Equifax Inc., which provided the data for Marketplace: Households, was doing some rethinking of its own. Last August, the credit-reporting giant announced that it was getting out of the marketing-data business, except for credit-related purposes. "Continuing the business just wouldn't be consistent with a socially responsible position," Equifax senior vice president John Baker told *The Wall Street Journal*. Equifax urged its competitors to follow suit. In fact, in October it urged Congress to *force* its competitors to follow suit.

Underlying these two dramatic reversals is the amorphous concept of informational privacy, variously described as a right, a concern, an interest, and a preference. In the broadest sense, your informational privacy has been violated when someone knows something about you that you don't want them to know. Traditionally, the "someone" has been the government, as represented in fiction by Big Brother and in real life by J. Edgar Hoover. But in recent years, the focus of public debate has shifted to the private sector, especially large businesses and organizations. Privacy advocates voice concern about a wide range of commercial activities, including credit reporting, job screening, direct marketing, insurance and medical record keeping, debit-card purchases, and electronic toll collection.

For the most part, these activists are not talking about clearly illegal invasions of privacy, such as wire tapping or unauthorized access to computer files. They are more alarmed by the standard operating procedures of credit bureaus, direct marketers, retailers, and others who deal in computerized information. They complain that you can hardly engage in a business transaction these days without

leaving electronic footprints, often without realizing it.

Judging from press coverage, the commercial collection and dissemination of personal information, fueled by faster, cheaper computers and new software, have created a privacy crisis. "Personal privacy is currently endangered, not because the information is available, but because it can be accumulated, massaged, maybe even changed, with astonishing ease," an article in *Student Lawyer* reported in 1983. "If widely adopted, computer systems now in use experimentally could create electronic records for the food we eat, the brand of toothpaste we buy, the newspaper articles we read, and the routes we drive to work. Improperly used, these data banks could destroy the last vestiges of personal privacy in the United States....Both the private sector and the government have shown themselves anxious to amass files that might allow them, ultimately, to know more about us than we know about ourselves."

Nearly a decade later, such warnings are still common: "Privacy in the United States is increasingly being invaded in today's world of computers and interconnected databanks" (*The Christian Science Monitor*); the nation is moving "closer to the day when all the information available on one person could be gathered in one place and then easily retrieved, sold or manipulated by anyone" (*The Washington Post*); direct marketing "has been instrumental in the erosion of personal privacy" (*The Wall Street Journal*); "the combination of invasive technologies and lax laws threatens to make the U.S. a nation of people who live in glass houses" (*Time*).

Even privacy advocates admit that much of the press coverage is speculative and overwrought. "It's disappointing to me that all the stories in the press on this issue are what I call 'view with alarm' stories," says Robert Ellis Smith, publisher of *Privacy Journal*. "A large part of the population probably thinks that there is a central data bank with all sorts of information about people in it. That's not the truth, but a lot of people think that. The rhetoric in the stories reinforces that."

But the issue of informational privacy is not entirely a media creation. The letters protesting Marketplace: Households indicate that many Americans are worried that strangers with computers know too much about them. One consumer, under the misimpression that the Lotus data base would include actual salaries, complained that "people's salaries are their own business....I could be fired for telling the person I sit next to what I make, and yet these people plan to publish it." Writing in *The New York Times* shortly after Marketplace: Households was canceled, Mary J. Culnan, an associate professor of business administration at Georgetown University, compared discovering that a private data base has information about you to "learning that you are being filmed secretly in the shower."

According to Lou Harris polling data, the percentage of Americans who said they were "concerned" about privacy increased from 33 percent to 79 percent between 1970 and 1991; the percentage who were "very concerned" went from 25 percent to 48 percent. This dramatic rise probably has a lot to do with the advent of computer-driven direct marketing, which has brought a flood of junk mail and junk phone calls into American homes.

Frustration with annoying solicitations has prompted some paradoxical responses. In November, Congress approved legislation that requires the Federal Communications Commission to maintain a list of people who say they don't want to receive telemarketing calls. Marketers are forbidden to call anyone on the list. Thus, in the name of privacy, the government will keep a central record of people with certain attitudes. How long will it be before a bureaucrat decides that taxpayers who are especially concerned about privacy are also more likely to be hiding income from the IRS?

Still, the move to regulate telephone solicitations indicates growing hostility toward direct marketers. "It's the first thing that people think of when they think of privacy," says Smith. "It's the tip of the iceberg, the one time they can see the result of the pooling of computer data without their knowledge to create information about them....It's symbolic, I guess, to a lot of people."

Just what it's symbolic of, though, is hard to get a handle on. When they discuss the perceived threat represented by the collection and dissemination of computerized information, consumers, business people, and privacy advocates are often talking about quite different things. Public concerns are vague, a mixture of annoyance at direct marketing, worries about data collection, and fear of computer technology. Business people tend to view these feelings as consumer preferences, something to take into account along with concerns about cholesterol, aging, body odor, and the environment.

But privacy advocates generally consider expectations about how information will be handled a matter of right that should be enforced by law. "Our current laws are inadequate," declares a 1991 report from Computer Professionals for Social Responsibility and the U.S. Privacy Council. "No citizen can be assured that information disclosed for one purpose will not be used for another purpose...or that private companies will not exploit collections of personal information for commercial gain." CPSR and the Privacy Council support legislation that would create a national Data Protection Board, restrict the flow of computerized information, and ban some transfers, such as the sale of marketing data by credit bureaus.

Janlori Goldman, director of the ACLU's Privacy and Technology Project, would like to see a separate statute for every business that deals with information about people. Congress has already passed a number of laws covering specific industries, including the Fair Credit Reporting Act (credit bureaus), the Cable Communications Policy Act (cable TV), the Right to Financial Privacy Act (banks), and the Family Educational Rights and Privacy Act (schools). Goldman says Congress should strengthen these laws and add more as needed.

Others are leery of such a top-down approach. "It's a very bad solution," says Alan F. Westin, a professor of public law and government at Columbia University who has studied

privacy issues for more than 40 years. "It would be horrendous for the flow of goods and services in the American marketplace." Westin, who has done consulting work for Equifax, argues that a batch of complex legislation is unnecessary and undesirable, that concerns about informational privacy can be addressed through market mechanisms and established common-law principles.

When you consider the right to informational privacy in the abstract, the call for more laws and regulations may seem sensible. But once you try to define the right and apply it to real situations, the advantages of Westin's more flexible approach become apparent. Privacy expectations vary from person to person and depend heavily on the type of information involved. Rather than imposing a one-size-fits-all solution, the law should allow people to attach enforceable conditions to the disclosure of information about themselves. In the final analysis, the right to informational privacy is nothing more than a variation on the right of contract.

The contract model is a vital safeguard against the excesses of well-meaning but overzealous privacy advocates. The power to control information about you is the power to control the speech of others. Based on contract, such control is strictly limited. Based on nebulous concerns about privacy, it is open-ended. Thus, a concept intended to protect individual dignity and autonomy could become a new rationale for censorship.

The controversy over Marketplace: Households shows how informational privacy relies on the idea of implicit contracts. When pressed, privacy advocates say the crucial problem with the data base was that Equifax used information from its credit files to put it together. Equifax got names and addresses directly from its files, determined sex from first names, identified married people through joint credit-card accounts, and placed people into age ranges based on dates of birth. It used other information from its files, such as occupation, to help decide what sort of people (for example, "successful singles") lived in which neighborhoods (identified by nine-digit zip codes).

Equifax supplemented information from the credit files with data from public sources such as the U.S. Census, the Bureau of Labor Statistics, and the U.S. Postal Service. It also purchased data from R.L. Polk & Co., a Detroit firm that compiles lists based on publicly available information, such as wedding announcements and vehicle registration records. Using these data, information from its credit files, and results from consumer surveys, Equifax linked extended zip codes to shopping habits (for example, "plays tennis" or "buys do-it-yourself products"), enhancing its neighborhood profiles.

When all was said and done, though, Marketplace: Households offered very little specific information about individuals. Instead, it included them on lists of people sharing certain broad characteristics (including income ranges), mostly based on where they lived. Lotus and Equifax both emphasized that the data base was not designed to allow a user to get even this rough information by typing in a name. The data base included other safeguards as well: no phone numbers, no lists of single women, no lists of people over the age of 65.

Still, in the eyes of most privacy advocates, Equifax had broken a promise. "Credit information ought to be held in trust," Smith says. "It's the clear intention of the Fair Credit Reporting Act that credit information be used only for credit, insurance, or employment. It was never contemplated that the information would be used for marketing purposes." Credit bureaus note that the law also allows use of the information for any other "legitimate business need," and they have argued that this covers the sale of marketing data.

But Smith is making a broader point as well. When you apply for a credit card or a bank loan, you expect that the information you divulge will be passed on to a credit bureau, which will then keep track of your purchases and payments. You know that other providers of credit, insurers, prospective employers, and perhaps landlords will have access to your file. (Indeed, in many cases you explicitly authorize this access when you apply for a loan, insurance, a job, or an apartment.) But you probably don't expect that some of the information in your credit file will be sold to direct marketers. And you can't possibly consent to something you don't know about.

THE POWER TO CONTROL INFORMATION ABOUT YOU IS THE POWER TO CONTROL THE SPEECH OF OTHERS.

So by using information in its credit files for a purpose other than that intended by the original source, Equifax violated an implicit contract. More precisely, the banks, department stores, and other businesses that give Equifax information broke a tacit agreement with their customers by failing to stop the credit bureau from sharing the information with direct marketers. The violation could have occurred with written records as well as electronic information; computers just made it easier. Moreover, the violation did not hinge on how sensitive the information in Marketplace: Households was or how effective the "privacy safeguards" built into it were, although most of the com-

plaints from consumers focused on these issues.

Critics of Marketplace: Households agree that Equifax's chief sin was breaking the first rule of informational privacy: Information disclosed for one purpose should not be used for another purpose without the subject's consent. First suggested in the early '70s, this principle is embodied in the European Community's proposed privacy regulations and endorsed by virtually every privacy advocate. But although the rule seems quite reasonable, nailing down its implications in the real world is tricky.

Much depends on how you define "consent" and what you think constitutes "another purpose." Under a loose interpretation, your information would be fair game once you revealed it to anyone, unless you explicitly indicated otherwise. Under a strict interpretation, you would have to specifically authorize every transfer of information. At one extreme, you might find total strangers privy to sensitive and perhaps embarrassing information about you—your salary, the movies you see, the self-help books you buy. At the other extreme, investigative reporters might have to give advance notice to the subjects of their exposés, and many common business practices—such as renting customer lists and soliciting orders by mail—could become prohibitively expensive.

Businesses with operations in Europe are worried that they will soon be at the mercy of E.C. bureaucrats charged with making such decisions. As proposed, the E.C. privacy regulations would require businesses to get explicit permission for secondary uses. For example, a magazine with European subscribers would have to obtain consent from each one before selling or renting their names and addresses to direct marketers. The standard practice now is to notify subscribers that they can ask to be removed from such lists. If they don't, it's assumed that they have consented. By reversing that assumption, the E.C. would effectively ban the rental of subscription lists by making them too costly to be worthwhile.

Another troubling aspect of the proposed regulations is a ban on the transfer of computerized information between the E.C. and any country without "adequate" privacy protection. This could stop international businesses from sending personnel files or customer records from the United States to Europe, and vice versa. Smith suggests that the E.C. may distinguish between information, such as that in credit files, that is regulated by U.S. law and information, such as that in personnel records, that is not. In the latter case, he says, the E.C. may be satisfied by a strict company policy, rather than insisting on a law. He acknowledges, though, that the bureaucratic costs will be heavy.

The main problem with the European approach—which CPSR and the Privacy Council endorse—is its rigidity. As proposed, the rules do not recognize that different standards may be appropriate for different situations. For example, when you subscribe to a magazine, you probably expect that your name and address will end up on a mailing list that marketers will use to try to sell you other magazines, books, music, sweaters, and electronic gadgets. If this bothers you, you can readily have your name removed from the list. But most people, although they occasionally complain about junk mail, also occasionally respond to solicitations.

"Prior-consent legislation is not in the best interest of consumers," argues Lorna Christie, vice president for ethics and consumer affairs with the Direct Marketing Association. "If I had to authorize every transaction before it could happen, I probably would not get a great number of the catalogs and marketing promotions that I receive and that I use because I don't have time to go to the mall." In this context, it seems perfectly reasonable for magazines to assume consent unless they are notified otherwise.

When you rent movies, on the other hand, your expectations are quite different. You would be surprised, perhaps mortified, if the video store put you on a list of people who like pornographic films or Jean Claude Van Damme movies and rented the list to companies selling related products by mail. In 1987, when a *City Paper* reporter obtained information about Supreme Court nominee Robert Bork's movie rentals, members of Congress were so shocked that they passed a law, the Video Privacy Protection Act of 1988, specifically banning such disclosures. Yet the incident was striking precisely because it was so unusual. Even though there is definitely a market for the names and addresses of people who like certain types of movies, selling such lists would be very bad for the video-rental business. It would violate an implicit contract of confidentiality.

Problems arise, however, when the expectations of the person disclosing information differ from those of the person receiving it. This is the case with regard to the sale of marketing data by credit bureaus. Until recently, most people didn't even know that this was going on, primarily because consumers usually do not deal directly with credit bureaus. Hence it was the responsibility of the businesses that provide information to credit bureaus to notify their customers that some of the data might be sold to direct marketers. The credit bureaus, for their part, should have insisted on informed consent. They blew it.

"Too many businesses really don't give a damn about this issue," says Rotenberg. "They'd really rather not be bothered." But if people do care how information about them is handled, a business with that attitude will not survive long. To the extent that informational privacy matters, customers will insist upon assurances—assurances that the courts should enforce, if necessary. "What the consumer wants today is to redefine the information contract between the business wanting to use personal information and the individual," Westin says.

At the same time, consumers will have to pay attention to what they consent to. Rotenberg recently complained to *Time* about "warranty registration" cards that include marketing questionnaires. "People fill out product cards because they want the warranty," he said. "But they end up on the mailing lists of stereo and record companies. Was that part of the stated

bargain when they filled out the card?" In a word, yes. The card that came with my new coffee maker, for example, says that the warranty applies whether or not you fill out the questionnaire, and it has a box you can check to keep your name and address off mailing lists.

Similarly, some privacy advocates have objected to frequent-shopper programs, which allow retail customers to get special discounts in exchange for using magnetized cards when they make their purchases. The cards enable the store to record what the customer buys; this information can later be used for marketing purposes. For example, someone who buys Minute Maid orange juice might get a coupon for Citrus Hill. But if this is an intrusion on privacy, it's one that the shopper has voluntarily agreed to. People who value informational privacy should learn to read the fine print.

Contracts only work if they bind both parties. Unfortunately, the ACLU, which is very concerned about informational privacy in the abstract, is chipping away at the most practical means for protecting it. The ACLU recognizes the right to withhold information or attach conditions to its disclosure, but it denies the reciprocal right to require information as a condition of participating in a transaction. For example, Goldman argues that employers should not be permitted to ask prospective employees for information that is irrelevant to job performance—except, perhaps, if they are prevented from making hiring decisions on that basis. Not only should things like religion or sexual preference be off limits, she says, so should personal habits such as smoking or hobbies such as skinny dipping. Otherwise employers might abuse their economic power.

"Applicants are routinely requested to sign waivers of confidentiality that permit the employer...to obtain information and records from virtually any source," says the ACLU handbook *Your Right to Privacy*. "Unless the applicant is in a strong bargaining position—which of course most applicants are not—he has no realistic choice but to sign the waiver." Hence the ACLU argues that the question of how much information to disclose should be resolved by legislation rather than negotiation.

Similarly, Goldman doesn't think banks should be allowed to require credit-card applicants to sign a waiver permitting the sale of their data to direct marketers. It's not enough that those who don't want to sign the waiver can take their business elsewhere. "Then what you're saying is that they have a right, but you're not going to enforce it," she says. "You're going to leave it to the marketplace."

Such reasoning undermines everyone's liberty to enter into voluntary business arrangements. Instead of getting the amount of privacy they want, people get the amount the government thinks they should have.

So long as the right to informational privacy remains vague, the mandate for this sort of state intervention is unbounded. Goldman resists attempts to define informational privacy. She acknowledges that information contracts can be helpful, but she says the right goes beyond such agreements. Asked repeatedly whether the mere collection of information by a private party could violate someone's right to privacy even without breaking an agreement, she equivocates. "We don't like hard-and-fast rules," she says.

A paper that Goldman co-authored in 1989 describes the task of protecting informational privacy this way: "Statutory standards should incorporate a balance between the sensitivity of the information at stake and the institutional justification or need for the information—the more sensitive the information, the more compelling the need must be for its collection, and the higher the standard must be for its disclosure to others."

Since different people will assign different weights to these conflicting interests, such balancing can easily become a shield for arbitrary restrictions. For example, some people object to "electronic blacklists." A 1990 article in *The Christian Science Monitor*, part of a series on "Privacy in the Computer Age," sounds the alarm over data bases that are used to screen tenants, employees, and policyholders. Landlords can consult a data base that lists tenants who have skipped out on their rent, been evicted, or damaged their apartments. The information is based on court records and landlords' reports. Other data bases list employees who have filed workers' compensation claims and people charged with violent crimes or drug offenses.

THE ACLU IS CHIPPING AWAY AT THE MOST PRACTICAL MEANS FOR PROTECTING PRIVACY.

There are legitimate questions about the usefulness and reliability of these data bases, but the article focuses instead on the unfairness of maintaining them at all. Yet none of this information was collected in a way that violated an agreement of confidentiality. In the case of landlord-tenant disputes, for example, both parties are free to reveal the information to anyone they choose. Just as the tenant may complain to a friend, the landlord may complain to the company that compiles the data base. In the absence of an agreement to the contrary, neither party can reasonably assume that the other will keep the matter

a secret—especially if the dispute ends up in court.

Although some privacy advocates tend to equate damaging information with confidential information, the issues are distinct. Even Goldman acknowledges that one of the most damaging kinds of information around—criminal records—ought to be publicly available. On the other hand, anyone who believes in keeping promises would agree that an utterly innocuous piece of information—say, your favorite color—should be treated confidentially if everyone you reveal it to agrees to do so.

The hazards of abandoning the contract approach to informational privacy are illustrated in Paul Sieghart's 1976 book, *Privacy and Computers*. Sieghart suggests that enforcing the right to privacy could mean preventing people from gathering published information. He offers the example of a John Smith who committed some petty crimes as a teenager that were reported in the local newspaper. As an adult, Smith moved to a new town where no one knew about his youthful indiscretions. In this context, Sieghart writes, to publicize Smith's crimes might very well violate his right to privacy.

The impulse behind Sieghart's desire to shield Smith is readily understandable. All of us value the freedom to move where we choose and make a fresh start, creating a new identity in a new locale. It seems unfair for someone to interfere with that freedom by bringing up unsavory facts. Yet we also value freedom of speech, which includes the freedom to research information in publicly available records and communicate it to whomever we like. Computers—more specifically, the ability to collect and process information readily and quickly—have brought these two values into conflict.

Nevertheless, the underlying rights remain intact. The right to construct your own identity is based on more fundamental rights, such as freedom of conscience, freedom of travel, freedom of association, and freedom of contract. It has never included the right to control the speech or thoughts of others—to dictate to them how they should perceive you. Yet that is the implication of extending privacy rights in the way that Sieghart suggests.

There remains a special class of cases where the contract approach will not work—cases in which one party can use force to get its way. If you want to drive a car legally, for example, you have to register it with the Department of Motor Vehicles. In many states, the DMV then sells information gleaned from registration forms to direct marketers; names and addresses for owners of new luxury cars are especially valuable. At least 26 states sell information from driver's licenses, including height, weight, and use of corrective lenses, to list merchants such as TRW, Donnelly Marketing, and I Rent America. (The main buyers of such lists are clothing merchants, particularly those who specialize in unusual sizes.)

Similarly, you are legally obligated to respond to the U.S. Census, which collects information that goes far beyond its original mandate of counting citizens for purposes of electoral apportionment. The U.S. Census Bureau then turns that information, much of which would be very costly for a private party to obtain, into statistical reports that are a gold mine for direct marketers.

Such government collection of information, backed by the threat of fines and imprisonment for failure to comply, is qualitatively different from private efforts. Direct marketers do not hold a gun to your head when they ask about your tastes in clothing or entertainment. But they do benefit from data that is collected coercively. Conversely, information collected by businesses may be used by the government: *The Wall Street Journal* reports that Farrell's, an ice-cream parlor chain, once sold a list of 18-year-olds, gleaned from its birthday club records, to the Selective Service System.

"It may well be the sharing of information between government and business...that is the megathreat," Westin says. "If ...there are no boundaries between private and public, then it seems to me you're getting into deep yogurt."

A related issue arises from government-supported monopolies. If the federal government allowed a competitive market in mail delivery, for example, some companies might offer no-junk-mail service. For an extra fee, all solicitations and advertisements would be filtered out of your mail. If antipathy toward junk mail were great enough, some delivery companies might not accept it at all. By contrast, the U.S. Postal Service has no incentive to tailor deliveries.

The local telephone monopoly also complicates privacy issues. Consider caller ID, a new service that allows subscribers to see the telephone numbers of callers. Caller ID is a powerful tool for businesses that want the home addresses of people who call to ask questions, place orders, or make reservations. Privacy advocates acknowledge that caller ID, especially linked to a reverse-directory data base, can also help people protect their privacy by screening out unwanted calls. But they object that it invades the privacy of callers who want to keep their numbers concealed. In response to this concern, the FCC last September proposed rules that would require local telephone companies to allow subscribers to block caller ID on a call-by-call basis.

In a competitive market, such decisions would not be made by bureaucratic fiat. Some companies might provide caller-ID blocking, perhaps for a fee. Others might find they could make more money by offering unimpeded caller ID. Still others might not offer caller ID at all, or might offer name ID—with the communications company matching numbers to names—instead. Consumers would have a choice, which is what the privacy advocates say they want.

Businesses, acting in response to consumer demands, are much more likely than the government to come up with creative, effective ways of addressing privacy concerns. For example, Buyer's Market, a new Equifax program, surveys consumers about their tastes and preferences, asking them what kind of direct-mail information, if any, they are interested in receiving. Equifax then sells lists of people interested in particular kinds of goods or services to direct marke-

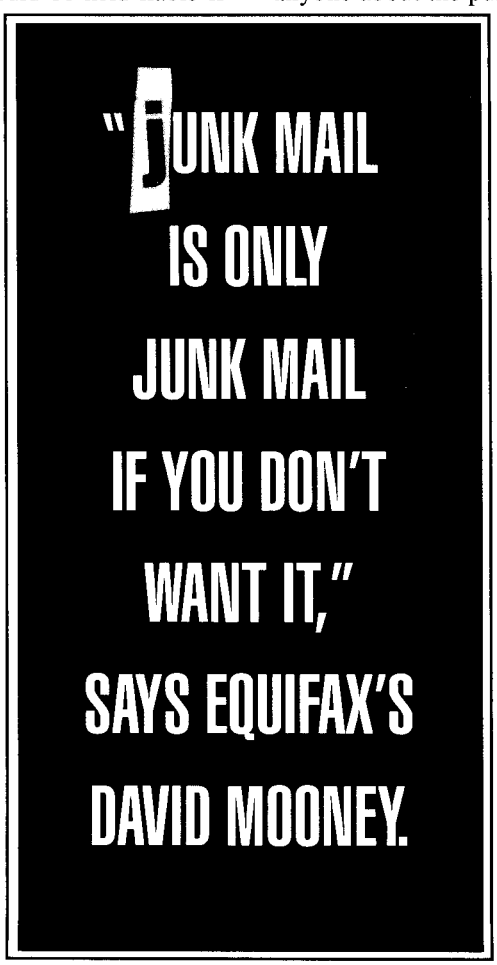
ters. Approved material bears a special seal so consumers know it has been sent as part of the program.

Equifax also distributes, free of charge, lists of people who aren't interested in certain types of material, or who don't want any solicitations at all. "It's a waste of time and money for a direct marketer to send somebody a copy of something they've said they don't want," notes David Mooney, public relations manager for Equifax. On the other hand, "junk mail is junk only if you don't want it."

In an attempt to cut down on junk mail, properly understood, the Direct Marketing Association and most major marketers keep records of people who want to opt out of mailing lists. The DMA's ethical guidelines urge businesses to give prior notice that information will be used for marketing purposes, and they forbid the use of information "that may be considered personal or intimate in nature...when there is a reasonable expectation by the consumer that the information will be kept confidential."

None of this has the force of law, of course, but the DMA argues that it's simply good business. "Privacy is a customer-service issue," says Christie, the DMA vice president. "If marketers don't allow consumers a sense of control over the dissemination of data, they've not fulfilled their customer contract, and the customer's going to go somewhere else."

Westin goes a step further. Once privacy standards are well established in an industry, he says, they should be legally enforceable. For example, marketers should be held liable if they ignore the DMA's opt-out list. "Historically, the comon law has been at its best when it deals with what the merchants are doing and why they're doing it," he says.



One conclusion that Westin draws from what the merchants are doing is that information is a valuable commodity, one that is owned by the person who dispenses it. "If my information is so valuable that it can be sold," Westin argues, "then it's akin to appropriation to take that valuable profile from me without my having any control over how it's used and without my getting any compensation. In a market economy, compensation has to flow to the ownership interests of the consumer."

In a recent issue of *Release 1.0*, a newsletter that covers computer-related issues, Editor Esther Dyson elaborates on the idea of data property rights. She imagines a world in which individuals sell limited use of their information through data brokers, who negotiate with direct marketers and other interested parties. "We believe the market could easily take care of the intricacies," she writes, "if the government would simply establish the principle: People own information about themselves."

But do they? Is it *possible* to own information? Since information is stored in brains as well as in computers, the implications are ominous. Strictly speaking, the right to own information implies a right to control the minds of others. Unlike physical or intellectual property, information per se is not a product of labor or creative effort. Moreover, information about you may equally be information about someone else with whom you interact: a retailer, an employer, a neighbor, a landlord, an insurer, a banker, a relative, a friend. When joint activities—a transaction, a dismissal or promotion, an eviction—give rise to "personal information," it's difficult to say a priori who "owns" that information and who, therefore, should control it.

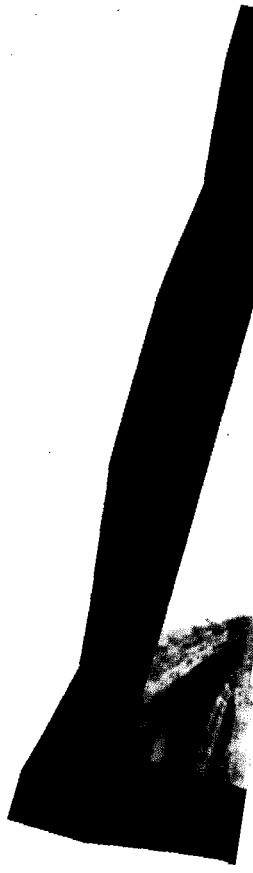
The right to control the information can be established, however, by attaching conditions to the interaction. Sometimes the conditions are implicit. You shouldn't have to tell your bank, your doctor, the phone company, or the local library that records of your credit-card purchases, your medical treatment, your telephone calls, or the books you read are to be treated confidentially. In other cases, though, you may need to make your wishes clear. You can say, "I am buying this car from you on the condition that you not tell anyone about the purchase," or "I am telling you my age on the condition that you keep it secret," or even, "You may give my name and address to one other person, but only if you pay me." But the right to attach such conditions is not the right to own information; it's the right to make contracts.

Although Westin may be hasty in suggesting that the law should recognize property rights in information, his general approach makes sense. As long as individuals are free to make and enforce information contracts, they can act to protect their privacy. Indeed, Westin predicts that "by the end of the '90s, every data base will be a consensual data base"—containing only information about people who want to be included.

"It should come about through market forces; I don't see how we can legislate it," he says. "I'm looking for ways to accommodate diversity, not for an all-or-nothing solution....The beautiful aspect of the technology we have is that, if we're thoughtful, it should allow us to accommodate all interests, rather than forcing a majoritarian solution on everybody." ◼

Jacob Sullum is associate editor of REASON.

Larissa Piyasheva



Yuri Kochevrin

Vassily Selyunin

Boris Pinsker

RUSSIA'S REAL RADICALS

CREATING A MOSCOW MARKET

BY CATHY YOUNG

When I first met Larissa Piyasheva in April 1990, she had been described to me as one of the Soviet Union's leading free-market economists. I knew that she had jolted the Soviet public at the dawn of *perestroika* by asserting in the monthly journal *Novy Mir* that seeking a "third way" between the market and socialism was like trying to "get a little pregnant." It was the first time a major Soviet periodical had printed what amounted to a capitalist manifesto.

Told of her advance billing, Piyasheva smiled self-deprecatingly. "A leading economist? I wouldn't say that. After all, I haven't been asked to work on any legislation or program. I'm not leading anybody anywhere."

Piyasheva's ground-breaking essay, "Who Has the Puffier Pies?" (that is, which system gives its people a better life), was roundly attacked by economists and commentators when it appeared in May 1987 under the alias "L. Popkova." Some of her critics even suggested that "Popkova" was a fiction made up by *Novy Mir* editors: No real person could hold such extreme views. As recently as last spring, when she spoke at a Moscow conference co-sponsored by the Cato Institute, a left-wing American correspondent sneered at Cato for digging up some obscure economist with crazy ideas.

PIYASHEVA EXPECTS MOST MOSCOW ENTERPRISES TO BE PRIVATIZED THIS YEAR.

Today, while it is surely too early to say that the libertarians have had the last laugh, the 43-year-old Piyasheva, aided by a small group of like-minded economists, heads an ambitious though troubled project to privatize virtually all commercial properties in the Russian capital. If all goes well—a big "if"—Piyasheva expects most enterprises in Moscow and all city-owned properties to be privatized this year. Piyasheva and her colleagues, who convinced the city government to approve their privatization plan last fall, have also helped inspire republic-wide reform efforts. But they achieved this influence only after a difficult struggle to overcome resistance from reformers attracted to Swedish-style social democracy.

For the past two years or so, "the market economy" has been a buzzword in Russian political discourse. Yet William Eggers, a Heritage Foundation policy analyst who specializes in East European economic affairs, recently observed that, compared to other ex-communist countries, few of the reformers in what used to be the Soviet Union seem well versed in classical-liberal economics. Mikhail Gorbachev's economic advisers, such as Abel Aganbegyan and Leonid Abalkin, spent five years preaching a "regulated" or "socialist" market and trying to formulate government policies that would accelerate economic growth without privatization. Even Grigory Yavlinsky, author of the 1990 "500-Day Plan" for a leap to a market economy, envisioned a transition expertly managed by the government every step of the way.

Piyasheva describes a mere handful of her colleagues as true market economists. But the real puzzle may be how anyone trained under the old Soviet system could emerge as a champion of free enterprise. "I think that in a sense, every Soviet person is a believer in the market, even if he doesn't realize it," Boris Pinsker, Piyasheva's husband and occasional collaborator, told me in 1990. "There is simply an innate sense of what is natural to human beings and what is not."

Besides, even the Soviet state had a need for economists with technical knowledge and the ability to analyze economic processes in the West—which required access to non-Marxist books. Piyasheva delved into John Maynard Keynes's *General Theory of Employment, Interest and Money* as a young researcher studying West German social democracy. Then the economic crisis of the mid-1970s convinced her that the Keynsian model was deeply flawed, prompting her to turn to Milton Friedman and F.A. Hayek. Vassily Selyunin, who is now working with Piyasheva on the Moscow privatization plan, was able to find copies of *The Road to Serfdom* and *Capitalism and Freedom*, translated into Russian for strictly limited editions, at the office of the daily *Socialist Industry*, where he worked as a commentator.

For all its rigidity, the old Soviet system had more niches for people with heretical views—if they were lucky and willing to maintain some decorum—than one might suspect. For a man without Party membership to be a commentator on a newspaper published under the auspices of the Central Committee was a shocking violation of the rules. Yet Selyunin was protected by an editor who, orthodox though he was, knew good journalism when he saw it. Long stretches of silence when journalists were instructed to accentuate the positive alternated with periods when the Party recalled the need to highlight certain stubborn economic problems so they could be corrected: "That meant our time had come, and I wrote article after article."

Glasnost allowed dissenting academics such as Selyunin, 63, and Piyasheva to express their views more openly and to gain a broader readership. Despite the initially hostile reception for "Who Has the Puffier Pies?" and the fact that the Soviet academic establishment was pointedly ignoring them, Piyasheva and Pinsker were soon reaching a wide audience in newspapers and magazines ranging from the radical *Moscow News* to the establishment daily *Izvestia*.

These were years when other Soviet writers were testing and expanding the limits of free speech in historical, political, or literary discourse; the economic radicals were doing the same in their field, which was often hard to separate from politics. Selyunin was the first to argue in an official Soviet periodical (in the essay "Sources," *Novy Mir*, May 1988) that one-party dictatorship and the command economy were not Stalinist perversions but the essence of Leninism itself. As time went on at what seemed an ever-quickening pace, it was not just fringe extremists anymore who were saying that profit was not a dirty word, that there could be no responsibility without ownership, that inequality was not to be feared.

But even as Soviet-style socialism had fewer and fewer defenders, the communist myth was being replaced by the myth of the benevolent welfare state. "We still have the notion here that there's the Swedish model, it's great, let's imitate it, we don't need this ruthless American system," Selyunin complained in late 1991. He was hoping to help dispel that notion with a magazine piece about a recent trip that took him to America, then to Sweden, and then to Germany.

"Your reaction to Sweden," he says, "depends on what country one is coming from. If you just left the Soviet Union, you will say, 'My God, we'll never have it so good.' But when you go to Sweden from America...." He was shocked by the high cost of goods and services in Sweden, the smaller selection at supermarkets, the poorer quality of housing. His conclusion:

"It's clear that the more socialism a country has, the lower its standard of living....The Swedish model is a kind of socialism where property remains private, where they say to the capitalists: You produce, you're good at that, but leave the distribution to us." The weakening of incentives to produce, he adds, is a self-evident result.

When the Soviet media began to admit, three or four years ago, that people in the West were far better off than in the so-called socialist world, the point was usually made that "pure" capitalism no longer existed anywhere and that Western democracies really had a far more extensive system of social welfare than any country in the Soviet Bloc. The clear implication was that the secret of the good life in the West today was its ingenious combination of markets and government controls.

It fell to Piyasheva and Pinsker to challenge this notion in magazines whose combined readership numbered in the millions. Their articles exposed the economic and social failures of the welfare state in Great Britain, Germany, and Scandinavia, and cited the successes of the Reagan and Thatcher revolutions (on which they co-wrote a book, published in 1988). Above all, they pointed out that if statist policies were sufficient to sap even strong economies with vast accumulated wealth, it was absurd to expect them to help rebuild a ravaged country.

In a January 1990 essay, "The Lessons of the 'Third Way,' " Piyasheva argued that when societies try to combine capitalism and socialism, they get the worst of both: "On this 'convergent' path to a mixed economy, the capitalist world...contracted 'socialist' ailments—bureaucracy, overregulation of economic life, the growth of the underground economy....Socialist countries, on the other hand, contracted 'capitalist' ailments—unemployment, open inflation, bankruptcies, growing income disparities and social instability," even as their intrinsic problems remained essentially unchanged.

To varying degrees, every professed free-market economist I have met in Russia accepts state ownership in areas perceived as natural monopolies—highways, rail transportation, telecommunications, possibly energy. And they do not question the need for government aid to those truly unable to help themselves. Says Yuri Kochevrin, 59, a top adviser to the Moscow privatization program who has worked closely with American libertarian scholars in recent years: "While I share, on the whole, the ideal of minimal government, I see the realities that make it necessary for us to borrow some important elements of the welfare state if we are to have a civilized society in Russia." What matters, he insists, is putting the horse—the creation of wealth—before the cart.

These economists also seem resigned to the fact that in the harsh transition period, in a country where the pauperized natives are getting restless and private aid institutions barely exist, the government will have to play a larger role in providing social benefits than would normally be desirable. Selyunin proposes that, in order to phase out military production without causing "10 million angry men" to pour into the streets, arms-industry workers should be paid their full salaries for a year and a half while the industry is being privatized and converted to civilian needs; additional pay based on the output of consumer goods would serve as an incentive for such production.

But the subsidies Selyunin and his colleagues advocate are temporary and structured so as to minimize interference in the market process—direct aid to needy individuals rather than price controls or subsidies to losing enterprises. Piyasheva has been one of the earliest and most vocal advocates of price deregulation, explaining that artificially low prices breed shortages, lines, and pervasive dishonesty. Unlike most Russian reformers, she is willing to go the extra mile of freeing the prices of staple foods such as milk and bread. She does, however, see the need for a food-stamp-like program for retirees, large families, and the disabled.

Selyunin cautions that, given the lack of resources, even pension indexing "should be targeted to help the really needy retirees on a case-by-case basis." Able-bodied people who are productively employed "should not get any subsidies, indexing, or minimum wage. They should take care of themselves. If life is too expensive, work two shifts and you'll make more money. Price decontrol triggers real progress for one simple reason: It gets people to work." (He would make an exception for some groups, such as teachers.)

Can this hard-headed approach be accepted by ordinary Russians? In April 1990, I asked Piyasheva if she feared that the transition to the market might spark violent unrest. She shrugged. "I am afraid of violent discontent for the opposite reason: The people keep getting poorer, they are being promised some sort of mythical reforms, yet they get only inflation and more shortages. But if goods appear on the shelves, I don't think that will cause anger." In early December, Selyunin predicted that price deregulation would be accepted without much turmoil: Most Russians were already forced to buy most necessities at prices not only free but artificially inflated by pressures from the corrupt state sector, and sometimes they had to stand in line to boot. To a large extent, he seems to have been right.

What may indeed spark intense anger, radical reformers have warned, is the kind of privatization that would put the fruits of reform in the hands of the old Communist elite, leaving the majority of the population swindled by another grand promise. To avoid such an outcome, Pinsker, Piyasheva, and Selyunin, early in 1990, devised a two-phase privatization plan for the Soviet Union. In the first phase, small businesses—stores, cafés, repair shops—would go on sale. Next, the total value of properties to be privatized would be divided by the number of people in the country, and every citizen would get an investment voucher for that amount, redeemable for stock in enterprises.

"Of course there is something socialistic about this scheme," says Selyunin with a grin, "but we thought we'd divide everything up one last time, and no more redistribution after that. Those with money can buy additional stock, but everyone will get an initial fair share. In a year or two, we'll be back to rich and poor. Some will sell their shares

and use the money for personal needs, or to get drunk."

But the Russian radicals have enough confidence in the innate common sense of most men and women to believe that the damage to individual initiative caused by 70 years of communism is not permanent. "The sense of property is in people's blood," says Piyasheva. "Everyone wants to be an owner. And if people were given back this right and left alone, the attitudes would come around in no time at all"—as soon as the government made it clear that the rights of property owners were taken seriously.

When Selyunin, Piyasheva, and Pinsker were working on the details of their privatization plan early in 1990, it might have seemed an interesting academic exercise. Two years later in the new Russia, their radical vision has, to some extent, become the foundation of current programs of economic reform. But the road to recognition was a long and rough one, and the road ahead remains difficult.

In spring 1989, when Piyasheva ran for the Soviet Congress of People's Deputies, copies of her program were seized as "unconstitutional" in the town of Zagorsk, and the local Party machine mounted a nasty campaign against her. That hardly came as a surprise. But in the elections for the Russian parliament the following year, her outspokenness made her unexpected enemies: the anticommunist democrats. By that time, they were all paying lip service to "the market" even as they advocated policies far removed from economic liberalism.

Piyasheva was particularly dismayed by plans to ration essential goods, proposed by such democratic leaders as Gavriil Popov, the future mayor of Moscow, and Ilya Zaslavsky, up for chairmanship of the Oktyabrsky district council. Piyasheva's February 1990 article in *Izvestia* attacking the rationing proposals, "Whom Will the Democrats Bar from GUM?", provoked a storm. The coordinating council of Democratic Russia voted to strike the heretic off the list of "democratic candidates" endorsed by the coalition—to "expel her from the party," as she put it with some bitterness.

Selyunin, perhaps because of his less combative temperament, was able to become an adviser to Democratic Russia; in the summer of 1990, parts of his economic-reform proposal, which stressed private ownership and low taxes, were incorporated into the program Yeltsin adopted as newly elected chairman of the Russian Republic's legislature. (The plan was never implemented, since Russia was still wrestling with the central Soviet government for control over its trade and property legislation.)

At the first congress of Democratic Russia in January 1991, Selyunin prophetically urged those gathered to accept the breakup of the Soviet Union as a given. "When power slips away from the Communists," he warned the democratic leaders, "we have to be ready to pick it up." Yet even he was taken by surprise when, as he puts it, "power fell into the lap of Yeltsin and the democrats after August 21. We were still thinking of defending the rights of Russia and other republics, and suddenly there no longer was a union." The democrats in the Russian state and in the governments of major cities were now in a position to do something about the economy—and be held responsible for the outcome.

It was almost certainly desperation that prompted Mayor Popov, at whom Piyasheva had continued to snipe relentlessly for his rationing and price controls, to approach her in October 1991 with an offer to head a city-wide privatization program. She was stunned by the offer and wanted to make sure that she would be allowed to pursue the kind of reforms she considered necessary. After several meetings, Piyasheva accepted the post; her plan for a sweeping privatization of the city's trade and services, developed with Pinsker, Kochevrin, and Selyunin, was quickly approved by the mayor's administration.

But the Moscow City Council and the municipal government had other ideas: For the next 15 years, the city would lease properties to private businesses. Council members cited concerns about real-estate speculation and fears that if given complete latitude, shop owners would start selling nothing but luxury goods and let the common people starve. Pinsker recalls that in one discussion, prominent democratic activist Alexander Muzykantsky put it to him more bluntly: "Dealing with leaseholders is simple. If I don't like him, I'll tell him to go to hell in six months. But if we sell him the property...."

After an unseemly squabble, the mayor backtracked, though remaining apparently supportive of Piyasheva. She spoke of her bewilderment and disappointment at "this social democratic crowd" now holding the reins of power. "These are people who believe in power, in the creative quality of coercion," says Pinsker. "They are wholly devoted to the socialist model of statecraft even though they don't believe in any socialist ideals such as equality. What they do believe is that the state knows best, and they should run the state."

The newspapers were already writing ironic obituaries for yet another reform plan smothered at birth in political bickering and red tape. But the fight was not over. Piyasheva, Pinsker, Selyunin, and Kochevrin wrote an open letter calling for the resignation of Moscow's municipal government. Then, in late November, the leadership of the Democratic Russia coalition—with the Communist Party gone, the country's largest political organization—met to discuss the deadlock. Most of the so-called Moscow radicals were strongly in favor of long-term leasing.

On the 26-member leadership council, Piyasheva had only two strong supporters: Yuri Afanasiev, who currently chairs the coalition, and Leonid Batkin, a highly respected Moscow political commentator. Yet in the end, the council voted to endorse Piyasheva's plan. What swayed them, says Batkin, was Afanasiev's threat to bring up the matter at the forthcoming full congress of Democratic Russia—where the council would be up for re-election—and disclose the names of those who killed a viable privatization program.

Days later, after a long huddle between Piyasheva and city officials, a compromise was achieved. Small and medium-sized shops and service outlets—with footage under 150 square

meters, or about 1,600 square feet—are to be privatized immediately, with first option given to employees. (For one year after purchase, the new owners are obligated to run the same type of business as before—they cannot close a dairy store and open a fur salon.) Larger units can be bought after a one-year lease, with the rent payments counted toward the purchase price, while about 400 "unique entities"—establishments with a distinct identity, rather than the generic "Café," "Groceries," or "Hair Salon" that one sees all over ex-Soviet cities—are to be converted into joint-stock companies, with the Moscow city government automatically acquiring 25 percent of the stock. Warehouses are to be privatized at the same time.

Despite the program's obvious flaws, which allow the new authorities to retain substantial control over the private sector, Pinsker defended the concessions: The important thing was to start putting properties in private hands. Early in December, Piyasheva appeared confident that if she were given the latitude to proceed with the plan, most trade and services in Moscow could go private by spring, and all city-owned properties by the fall of 1992. Her only concern was that the Russian government would drag its feet on republic-wide reform, especially price deregulation and monetary stabilization, leaving her with the unenviable task of trying to dismantle socialism in one city.

The Russian government, which took the plunge into free prices in January, has announced plans for extensive privatization, based in part on the plan developed earlier by Pinsker, Piyasheva, and Selyunin. The program incorporates additional suggestions from Selyunin, including the idea of selling profitable enterprises at higher prices than losing ones of the same size and a proposal to distribute no more than 25 percent of the stock to employees. But the future of market reform remains uncertain. Piyasheva is unhappy about the plans of Yeltsin's economic team to privatize small enterprises by auctioning them off for money. While she has no moral qualms about businesses ending up in the hands of unworthy people, her concern is that such buy-outs will provoke not just popular resentment but vigorous resistance from employees. Pinsker worries that the Russian republic's privatization project lacks the key element of speed: "It is similar to our program in all but one detail, in the same way that a person whose heart has stopped beating is similar to one whose heart still beats in every way but one."

Moreover, the price liberalization was marred by serious errors. The first mistake, Selyunin said last December, was to announce the measure far in advance and then postpone the lifting of controls by another two weeks. The anticipation—"just like sitting in the dentist's waiting room," as Selyunin put it—not only frayed people's already jangled nerves but prompted panic buying, lines longer than ever, and a catastrophic depletion of food stocks. Another blow was the simultaneous imposition of a steep (28-percent) value-added tax, which has led to a situation that, for Russia, is paradoxical: Black-market prices are lower than those in the stores. In addition, the tax encourages people to barter rather than buy.

And while it is clear that free prices need to be coupled with privatization if they are to stimulate the economy, even the Moscow privatization plan is proceeding haltingly at best—not for lack of popular support but because, Pinsker believes, it is being deliberately tied up in red tape by the Moscow bureaucracy. Under the compromise agreement, Piyasheva has no executive powers; her decisions have to be sanctioned by the mayor in order to be enforced, and she has new doubts about the mayor's actual commitment to the program.

MUSCOVITES HAVE FILED ABOUT 10,000 APPLICATIONS FOR BUY-OUTS OF STATE PROPERTY.

Public response, meanwhile, has been enthusiastic: By January 15, individuals and employee groups had filed about 10,000 applications for buy-outs of state properties in Moscow. Yet no more than a dozen outlets actually had been sold. At this rate, the privatization effort will take years to complete—years the Russian reformers do not have.

For parallels to the leap from the wreck of a centrally planned economy to the market that the republics of the former Soviet Union now need to make, Selyunin and Piyasheva look back to the "German miracle" engineered by Konrad Adenauer and Ludwig Erhard. "Postwar Germany was in ruins, hardly better than we are today," Selyunin observes. "They had churned out so much money that the money was worthless; cigarettes were the real currency. And then, they deregulated prices in two days. So we are not the first to face this problem."

Some may argue that the analogy is faulty; Germany, after all, had not had private enterprise suppressed for 70 years. But any glimmer of optimism is refreshing in today's Russia. What makes Piyasheva most hopeful is the support she has received from Moscow's business and financial community, which has repeatedly pressured the mayor on her behalf: "I saw that there is now a segment of people in this society who have a stake in market reform and will support it," she said last November, the day after her compromise with the city government had been achieved. But even more important, she added with a weary smile but only half joking, she has the support of Mikhail Zhvanetsky, Russia's most popular stand-up comedian, who now gives her a plug in every show. ◼

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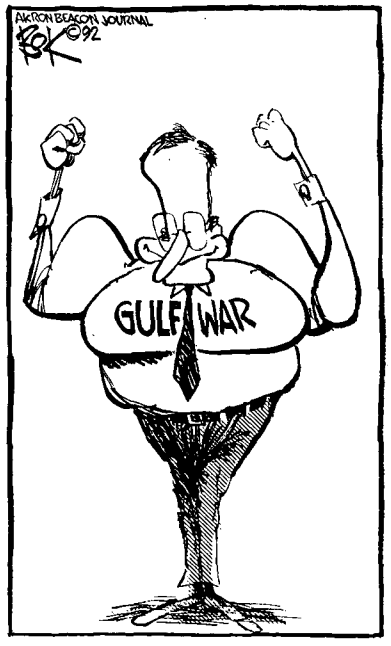
THE THIRD WAY

BY MARTIN MORSE WOOSTER



Now that the Cold War has ended and the Soviet Union is as dead as Lenin, Stalin, and Brezhnev, America's role in the world needs to be reassessed. Except in Korea, where Kim Il Sung continues his tyrannical ways, most of America's overseas commitments have lost their purpose. If the Red Army, for example, has proven incapable of remaining coherent during a putsch, why does the United States still have hundreds of thousands of troops in Germany? To subsidize the robust German economy? To guard against the day when the Belarusan army, piqued by Lithuanian perfidy, seeks revenge by marching toward the Rhine?

The conventional wisdom is that the debaters among foreign policy analysts divide into two camps—"isolationists" and "internationalists." But this is a false dichotomy. Outside of Patrick Buchanan and his advisers, there are few people in the isolationist camp who favor economic isolation; most of the "isolationists" are steadfast free traders. And most people who favor a limited American presence overseas are not averse to diplomatic activity; I doubt that many members of the Cato Institute's foreign-policy staff would mind if a secretary of state played "honest broker" in a peace effort, as long as his activities did not entangle America in permanent military commitments.

If the isolationists are not opposed to America's playing a part on the world stage, most of the internationalists are not jingoists. There is a great fear among the American left (most recently expressed in the January/February *Utne Reader*) that President Bush will get the United States involved in another war to boost his popularity. But there would be little support among the internationalists for such a move; while the Persian Gulf war may well be a modern counterpart to a Victorian "splendid little war" (in British eyes, equivalent to Omdurman; in American ones, to the Spanish-American War), there are no imperialists beating the tambourines for a swift conquest of Cuba or Libya.

The prevailing mood among the internationalist camp is what Zbigniew Brzezinski, in the fall issue of *Foreign Affairs,* describes as "selective global commitment." In Brzezinski's view, the changes of our time are as important as those of 1815 or of 1945; the end of communism is, for him, as important as the defeat of Napoleon or the death of Hitler.

We are now, says Brzezinski, in "the third great transformation of global politics." The first transformation (after Napoleon) created the system of European balance-of-power politics that survived for a century. The second transformation (after Hitler) replaced this system with two superpowers battling for the mastery of the world.

Whatever happens in the future, says Brzezinski, America's role will be "selective and proportionate global commitments." The age of unilateralism is at an end, Brzezinski contends. "U.S. policy will have to strike a more deliberate balance among global needs for continued American commitment, the desirability of some devolution of U.S. regional security responsibilities and the imperatives of America's domestic renewal." Thus even someone as hawkish as Brzezinski knows that America's military presence overseas must be cut back substantially.

Nor are many internationalists unthinking admirers of President Bush. In the January *Commentary,* George Weigel of the Ethics and Public Policy Center acidly looks at the Bush administration's "conventional realism" and finds it wanting.

James Baker, argued Weigel, went to Belgrade and preached a sermon on the sanctity of frontiers, freeing the Serbian Communists to bomb Europe for the first time since 1945. George Bush went to Kiev three weeks before the failed coup and told the Ukrainians that their efforts to free themselves from Soviet tyranny were "suicidal nationalism." (Columnist William Safire described this address of Bush as the "Chicken Kiev"

speech.) And in 1989, President Bush, in the name of "stability," did nothing to defend or support the democrats slaughtered in Tiananmen Square, thus appearing to sanction (or at least not condemn) the butchers of Beijing.

Weigel would prefer that the principal goal of U.S. foreign policy be to advance democracy around the world. He believes that a foreign policy grounded in "principle-free Realpolitik will so estrange our foreign policy from the deepest convictions of the American people that they will retreat in disgust (or at the very least, confusion) into the kind of hemispheric bunker now being designed by Buchanan and his tribe."

It is as unlikely that America will adopt a rigid isolationism, complete with hefty fines for anyone who dares buy Italian wine or French cheese, as it is that America's arsenal will be privatized by the government selling timeshares in nuclear warheads. But what is clear is that John F. Kennedy was the last president to institute a foreign policy that was popular with the people. The challenge facing foreign-policy gurus is to design a strategy that will be both popular and appropriate for a post–Cold War world.

One curious attempt to devise such goals is provided by James S. Robbins in the fall *Orbis*. Robbins, a frequent contributor to *Liberty* with a recent doctorate in international relations, calls for America to adopt what he calls "muscular libertarianism."

In practice, Robbins's beliefs are not far from those of Weigel or Charles Krauthammer. Robbins approves of military force as long as it does not result in large numbers of casualties. The invasion of Kuwait, in his view, was justified because the allies' victory was achieved with very few deaths; "the war was worth the sacrifices Americans actually made." He also approves of alliances and intelligence services (with qualifications).

If Robbins were president, American foreign policy would be founded on two principles. If U.S. interests, citizens, or property are imperiled, "then state action is mandatory, in proportion to the threat." If American interests are not directly threatened, "intervention is still permissible if the action under consideration will promote the cause of freedom, and if the United States has the capacity to take this action with a good deal of success." Under these principles, the invasion of Grenada would be justified, since it had a clear mission; the Marine presence in Lebanon would be ruled out.

In a reply to Robbins, the Cato Institute's Doug Bandow uses familiar themes: Wars bloat government, and America's ability to promote democracy is doubtful. ("There is little that the United States can do to make Serbia a free country," he argues.) But there are better arguments to make against Robbins than Bandow's, and they are to be found in a forceful article by the Hoover Institution's Angelo Codevilla in the January/February *American Enterprise.*

Robbins's thesis rests on the assumption that intelligence services can accurately and dispassionately provide information. "Good intelligence work contributes markedly to national security," he writes.

But Codevilla charges that the Central Intelligence Agency has managed to misread or misinterpret most of the data it receives. According to Codevilla, the CIA, by relying heavily on highly sophisticated spy satellites, failed to predict the Yom Kippur War of 1973 and the Soviet invasions of Czechoslovakia and Afghanistan. By the end of the 1980s, "our technical system failed to see or hear what millions of people in the East had sensed: that communist bosses would no longer kill to stay in power."

In 1990, says Codevilla, U.S. analysts could see Iraqi forces massing on the Kuwaiti frontier—but all but one predicted that the Iraqis would never invade. The same analysts then unanimously concluded that an Iraqi invasion of Saudi Arabia was a certainty. While military intelligence could easily search for and destroy Iraqi tanks and airplanes, the civilians were unable to determine what Saddam Hussein was thinking or even how the Iraqi general staff saw the conflict. "As far as U.S. prosecution of the Gulf War is concerned," Codevilla writes, "the huge superstructure of 'national intelligence' and the CIA in particular hindered military intelligence more than they helped."

Codevilla is not a dove or a foe of spies. He would prefer that the existing intelligence services be scrapped and replaced with a leaner, more flexible force of part-timers that, by not being civil servants, might be devious enough to infiltrate a drug-dealing organization or an Indian nuclear complex. Most of America's current spies, says Codevilla, are untrained, know few foreign languages (according to one study, only 20 percent of CIA agents in Mexico spoke Spanish), and "their activities are often circumscribed by the embassy cocktail circuit."

The CIA, if Codevilla is right, is incapable of doing its job. Given the nature of bureaucracies to resist change, it is probable that American presidents, unable to rely on the intelligence agencies, must use their instincts to determine when and how to intervene. Are there any rules presidents can follow in determining when to use force?

Neither the isolationist camp nor James Robbins gives satisfactory answers. There are Americans living in most countries of the world; thus, under Robbins's rules, American forces could intervene in any country on any pretext. But strict isolation is also improbable: What would happen if a fascist or communist dictator emerges to threaten the world? Josef Stalin, after all, was not a phantom conjured by American militarists to justify defense spending.

A more reliable rule would be this: When in doubt, stay home. If a president cannot convince Congress of the need to send troops, then it may well be that an American military presence in a troubled region is unnecessary. As the Cold War fades, it is clear that many conflicts, once deemed of vital strategic importance, are now regional wars of little concern to the United States. As Irving Kristol has observed, what difference does it make to America who rules Liberia?

Contributing Editor Martin Morse Wooster is a writer, editor, and researcher living in Silver Spring, Maryland.

NARC ADAPTATION

BY JACOB SULLUM

In *Crisis and Leviathan*, Robert Higgs argues that national emergencies result in expansions of government authority that partly persist long after the crises have passed. A similar effect can be observed in popular culture. Though we seem to be experiencing a lull in the war on drugs, at least so far as the news media are concerned, the years of Just Say No and zero tolerance may have permanently narrowed the range of what is acceptable on network TV and in big-studio films.

In the novel, *Rush*'s main villain is the police chief. In the movie, it's Will Gaines (Gregg Allman, RIGHT).

No more Cheech and Chong, that's for sure. No current movie is likely to include, even in passing, a lighthearted treatment of illegal drugs, along the lines of the cocaine scene in *Annie Hall* or the pot scene in *9 to 5*. And it would certainly be surprising if a major film questioned the war on drugs.

So it was interesting to see what happened to Kim Wozencraft's novel *Rush* on the way to the screen. Not surprisingly, its implicit critique of the war on drugs has been obscured. But it's difficult to say whether this was deliberate or merely the by-product of artistically smart but morally obtuse creative choices. In adapting the book, screenwriter Pete Dexter and director Lili Fini Zanuck made all the right cuts. They condensed the plot, used composite characters, edited out the commentary and introspection, and lopped off the story just after the climax. In the process, they heightened the drama and sharpened the focus. They also deleted the message.

The result is an artful, compelling, but ultimately pointless film. The casting is right on target, the performances are sharp, the scenes are vividly realized, and the score (by Eric Clapton) provides the perfect ambience. But the experience of watching *Rush* is captured in the title: powerful and quickly over, with no lasting significance.

From the book's cover (cocaine scattered on a red background, partially obscuring a badge) to its gritty scenes and clipped, streetwise dialogue, *Rush* is obvious movie material. Based on Wozencraft's experiences as a Texas narc, the book follows Kristen Cates from her introduction to drug-law enforcement through a series of undercover investigations that ultimately lead to her conviction on perjury charges. The film rights went for $1 million.

In broad outline, *Rush* is not much different from dozens of other stories about drugs and police corruption. But its details add up to a scathing indictment of the war on drugs. That indictment is lost in the translation to film, largely for good cinematic reasons. The book's questioning of the drug laws takes place mostly inside Kristen's head, an internal dialogue that could only be suggested on film unless the script included a running narration that would have seemed intrusive. Simplification of the story did away with many of the other clues to the change in Kristen's attitude toward prohibition.

The result is a muddle. *Rush* is certainly not gung-ho about the drug war, but neither does it make a statement against it. Or any statement at all, for that matter. Even within the constraints of a two-hour movie, Dexter and Zanuck could have tried to say something as well as tell a story. At the very least, they could have paid attention to the moral implications of their plot and character changes.

In the book, for example, the person whom Kristen comes to hate more than anyone else is the chief of police, Donald Nettle, a vile drug warrior with no concern for justice. Ostensibly a religious man seeking to protect the town's children, he is really interested only in advancing his career and pursuing personal grudges. Though the movie shows Nettle (Tony Frank) to be hypocritical and corrupt—pressuring Kristen (Jennifer Jason Leigh) and her partner, Jim (Jason Patric), into faking a case—he is more comical than sinister. The real villain of the film is the menacing Will Gaines (Gregg Allman), the pornographer and suspected drug dealer whom Nettle wants framed. The movie begins with Gaines, and Jim and Kristen track him through most of it. The ending, which is a major departure from the book, focuses on him as well.

The treatment of the story's victims also detracts from Wozencraft's criticism of the drug war. The book distinguishes between drug offenders who are basically harmless and drug offenders who are also guilty of theft and violence. One of the former is Walker, an amiable construction worker with "a low, soft voice, full of the yes-ma'am courtesy of a shy cowboy." Just before Walker becomes an informant under the threat of a 40-year prison sentence, Kristen observes: "This guy did not need to go to jail....Working undercover on this kind of defendant made me feel like a meter maid."

Although Walker (Max Perlich) remains a sympathetic character in the movie, he becomes a car thief as well as a small-time drug dealer—an amusing

COURTESY OF MGM-PATHE COMMUNICATIONS CO.

car thief, but a thief nonetheless. With the exception of a few briefly glimpsed characters, all of the other drug offenders in the movie are nasty, violent, hairy-knuckle types. In the book, Kristen recalls a conversation with another narc: "We had traded war stories, and then, from nowhere, he said, 'Yeah, I met some pretty good people. And the thing was, well, I don't know. Did you ever get the feeling that *they* were the ones who were right?' " No one watching *Rush* is likely to get that feeling.

The blurring of the distinction between drug crime and real crime continues in a crucial confrontation between Kristen and Walker. She tells him that he'd better go into hiding because the cops are about to bust the people he has helped set up. He refuses, saying, "I'm fucking ashamed. You understand?" Having betrayed his friends, Walker feels that he doesn't deserve protection. His shame has broader significance, assuming his friends were guilty only of victimless crimes. But this point is easily lost, given the movie's general portrayal of drug offenders.

In the book, another narc confides to Kristen his misgivings about sending decent people to jail: "Did you ever get the feeling that *they* were the ones who were right?" No one watching *Rush* is likely to get that feeling.

In the book, Walker tries to protect his friends by cutting deals for them, but he feels no compunction about turning in genuine bad guys. So his confrontation with Kristen has a clearer meaning. "This may sound weird," he says, "but I'm not ashamed of what I've done. I mean, okay, I'm a dope dealer in the sense that I take care of a few friends. That doesn't mean I like burglars and thieves. You got a lot of them, and that's fine by me. I'm not ashamed."

Kristen, on the other hand, is. But the film underplays or ignores her guilt over the routine aspects of drug-law enforcement: lying, entrapment, betrayal, hypocrisy. Instead, it plays up her drug addiction. We see her transformed from a naive, fresh-faced police recruit into a pale, strung-out, needle-marked junkie little different from the people she is supposed to catch. In the book, this physical degradation parallels a spiritual descent prompted by the warped morality of the drug war. In the movie, it's purely a personal matter.

What broader point should the viewer draw from Kristen's predicament? Clearly, not all narcs are drug addicts. The publication of *Rush* helped revive the debate over how common it is for undercover cops to use illegal drugs at all. (In the book and the movie, this is standard practice, a way of allaying dealers' suspicions.) But regardless of how often police officers actually take illegal drugs, they routinely buy and sell them; that is how they make cases—by violating the bans they enforce. Everyone who participates in the war on drugs has to face this central contradiction.

The blurb that runs above the title in ads for *Rush* gets the nature of Kristen's dilemma precisely wrong: "Somewhere between the buy and the high...they forgot they were cops." The implication—that if only they had *remembered*, if only they had done their jobs right, everything would have been OK—is completely at odds with the message of Wozencraft's novel, that the drug war is inherently corrupting.

Without this insight, it's hard to make sense of Kristen's disillusionment. "By the time Kristen discovers there's not much difference between the two sides of the law," writes *L.A. Weekly* critic John Powers, "you may feel you've seen it all before." Unfortunately, he's right.

Jacob Sullum is associate editor of REASON.

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STUDS

BY MICHAEL KONIK

Being a resident in one of the world's most restrictively governed countries has its pros and cons. Big Brother may constantly be looking over your shoulder, but sometimes his constant attention makes the little things in life a lot easier. Like finding a date.

Citizens of Singapore, the former British colony on the southern tip of the Malaysian peninsula, have learned to live with laws and ordinances that cover virtually every aspect of their highly supervised lives. Undercover litter police hand out $500 fines for an errantly tossed soda can; failure to flush a public toilet carries a penalty of $250; and jaywalking at one of the city's tightly regulated intersections can land the offender in jail.

For 25 years, Prime Minister Lee Kuan-Yew, an omnipotent yet apparently incorruptible dictator, executed a thorough master plan to make Singapore one of Earth's greatest countries. The tiny city-state already boasts the world's busiest port, the tallest hotel, a top-rated commercial airline, and the cleanest streets of any major metropolis. For his swan song, his ultimate feat of national planning, Lee tried to make sure Singapore's best and brightest will have the brightest and best babies. The more the better. His handpicked successor, Goh Chok Tong, is dutifully upholding Lee's matchmaking tradition.

Through the 1970s and early '80s, Singapore, like China, instituted strict family-planning measures. A few years ago—in, coincidentally, 1984, to be exact—the government decided its program had worked too well. Eligible young women were eschewing marriage in favor of careers, and those who were married were obediently avoiding conception. Lee figured the masses had better start having kids. But instead of simply distributing free copies of *Penthouse*—which, like *The Asian Wall Street Journal*, is strictly forbidden there—and packets of exotic Chinese aphrodisiacs, the guys in charge declared that while Singaporeans were at it, they might as well have Superkids. Thus, the Social Development Unit was, well, born.

Singapore's SDU, SDS (Social Development Section), and SPS (Social Promotion Section) are government programs that combine utopian social engineering principles straight out of *Brave New World* with participants from an Asian version of *Revenge of the Nerds* to make an often teased but frighteningly successful dating service—the world's only government-subsidized dating service.

For a modest processing fee—as little as $15—unwed Singaporeans may be entered in the government's computerized matchmaking data base, which, after analyzing the applicant's answers to a battery of personal questions, spits out a list of "compatible" dates.

Brave New World meets Revenge of the Nerds.

But unlike the typical American dating service, which in nearly every other respect the SDU resembles, potential partners are segregated by a rating system that ensures the Alphas don't mix with the Betas. Thus, a college graduate may date only a college graduate; an "O" (ordinary) level guy may pursue only "O"-level gals; "N"s (normals) go with "N"s; "A"s (advanced) court "A"s; and lowly PSLEs (Primary School Learning Examination graduates, i.e., those who never made it through secondary school) must keep their mitts off any eligible babe with more education than they.

Not only does Singapore's SDU take much of the tiresome legwork out of a young man's quest for a spouse, it pays for his wooing as well. The government sponsors "social and educational activities" for its singles, ranging from dances and dinners to country outings. In other words, the government picks up the tab while prospective lovers have a good time: Those who consummate their courtship with marriage and children receive a variety of perquisites—including cash—to reward their fruitful relationship.

To date, the SDU boasts 1,129 weddings as a result of its generously funded matchmaking. Still, reports the *Strait Times*, Singapore's English-language daily newspaper, the SDU has been only partially successful in losing its image as the yenta service for the "single, desperate and ugly."

Rose, 24, who participated in SDU events for two years before meeting her boyfriend by more conventional methods—in a bar—says, "Most of the college graduates using the SDU are total losers who probably will never find a wife whether the government pays for their dates or not. Then you have another group: older guys, in their 30s, who abuse the system. They know they can meet a lot of girls for free, so they sign up, but they have no intention of getting married." The government recently imposed a five-year limit on SDU membership to discourage insincere wolves.

A spokesman for the Singapore Ministry of Finance, which funds the national dating service, says, "The SDU was greeted with skepticism and resentment initially. But now it is a fully accepted and successful institution." While many young Singaporeans might scoff at that assessment, it's safe to say there are probably several thousand single American guys who, sick and tired of calling various 900-number "love lines," wouldn't mind if Uncle Sam paid for their night on the town with a made-to-order date. Who said oppressive rule isn't any fun?

Michael Konik writes about travel for The New York Times, Travel & Leisure, *and* New York Newsday.

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UNEQUAL TREATMENTS

BY ELIZABETH LARSON

Most people wouldn't mind a trip to the Bahamas just before Christmas. Charles Greene did. Number one on his sight-seeing list was a local establishment called the Apothecary, and the souvenir he was hoping to bring home was no mere trinket. It was a supply of pills for his ailing father. U.S. Food and Drug Administration policy had forced this otherwise law-abiding mathematician to become a drug smuggler, and he was very worried about getting caught.

Greene's 84-year-old father had Alzheimer's disease, a fatal nerve disorder that causes loss of memory and muscle function. One physician, moved by the sight of the Harvard-educated chemist unable even to dress himself or swallow solid food, suggested a promising experimental Alzheimer's drug known as THA. Unfortunately, the FDA had imposed an "import alert" on the drug in December 1988.

The agency claimed that THA "is known to be a potent hepatotoxin" (causing liver damage), despite data from an international array of doctors arguing that the drug's benefits far outweigh any risk. So Greene had to go abroad at great cost and inconvenience in search of THA: to the Bahamas, to Canada, to Belgium. Greene's father has since died, but hundreds, perhaps thousands, of other Americans with relatives suffering from Alzheimer's continue to risk arrest and prosecution for a chance to help their loved ones.

AIDS patients have it a little easier. Dozens of "buyers' clubs" throughout the United States routinely import large quantities of experimental drugs, such as Peptide T and DDC, for sale to AIDS patients. The activities of these organizations are clearly illegal under FDA regulations, which allow patients to import only small quantities of unapproved drugs for personal use. Yet the agency tolerates the buyers' clubs and equivocates when asked about their legal status.

In July 1991, during the same week that an FDA advisory committee recommended that the agency continue to keep THA off the U.S. market, another advisory committee recommended approval of DDI, an AIDS drug officially blamed for at least six deaths. That week, AIDS activists marched in front of the FDA building in Rockville, Maryland. No one marched for Alzheimer's patients.

In recent years, patients seeking access to experimental drugs have noted a double standard in FDA policy—a lenient approach for AIDS, a stricter one for other fatal illnesses. Under pressure from AIDS activists, the agency has bent and modified its rules, winking at practices that violate regulations and expediting approval of experimental drugs.

Americans with relatives suffering from Alzheimer's disease continue to risk arrest and prosecution for a chance to help their loved ones slow the descent into oblivion.

On the PBS series *TechnoPolitics* last May, FDA chief David Kessler explained: "The AIDS community has taught the agency about the importance of getting drugs out there as soon as there is reason to believe that a drug works and that it's safe, and unnecessary delays are intolerable when one's dealing with life-threatening diseases." In fact, the FDA seems to have learned quite a different lesson: The squeaky wheel gets the grease.

"Our older people are really getting a raw deal," says Jim Driscoll, an AIDS activist and president of the PATH Foundation. "They're treated like criminals because they don't have the ability at this point to bring political pressure on this particular issue, whereas AIDS patients do have the political power. They are younger, they can take to the streets, and they are treated much, much better than people with Alzheimer's or cancer."

Says Michael Fumento, a former AIDS analyst for the U.S. Commission on Civil Rights, "You don't see too many Alzheimer's quilts. You don't have Alzheimer's people chaining themselves to the FDA's doors."

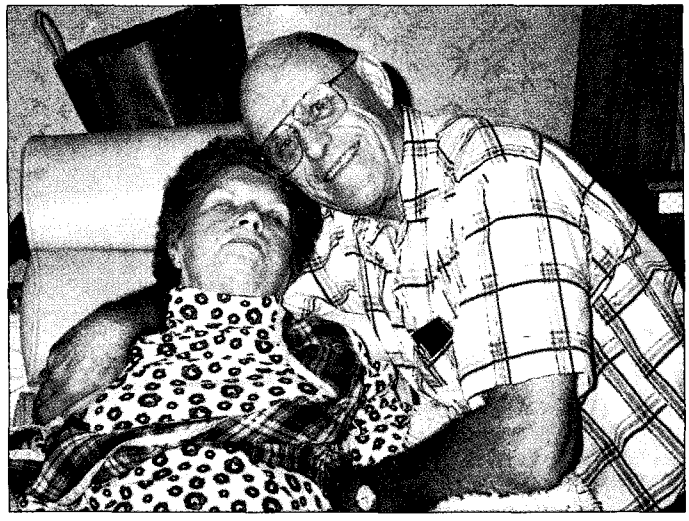
On December 13 a group of Alzheimer's patients challenged the FDA's double standard in federal court. They filed a class-action lawsuit against the agency, seeking approval of THA for general use. The lawsuit notes that, unlike the nation's 4 million Alzheimer's patients, the 100,000 AIDS patients already have an approved drug (AZT). It concludes that "without question, the record demonstrates gross inconsistency in the FDA's approval and non-approval of these respective drugs." The suit charges that the FDA's treatment of THA violates the Administrative Procedures Act as well as the rights to privacy and freedom of choice in health care protected by the Ninth and 14th Amendments.

The lawsuit may have had some effect already: In February the FDA began allowing 3,000 patients access to THA in order to collect more data on the drug's efficacy. But the plaintiffs aren't satisfied: What about the other 4 million Alzheimer's patients?

It was a November 1986 paper by Dr. William Summers in *The New England Journal of Medicine* that first documented the success of THA in slowing the progressive loss of brain cells controlling memory and reasoning that is an early sign of Alzheimer's. Ostensibly to confirm Summers's data, in June 1987 the FDA launched a study of THA. Saul Kent,

president of the Florida-based Life Extension Foundation, which is bankrolling the THA lawsuit, charges that the FDA's study was in fact "a deliberate campaign to sabotage the drug." FDA officials did not heed Summers's caution that liver damage was a potential, but reversible, side effect, and they did not allow researchers to administer the memory-enhancing nutrient lecithin along with THA, as Summers had.

In fact, Summers declined an invitation to participate in the study because, he said, the FDA had no intention of duplicating his work. But doctors in Canada, Sweden, and Britain were doing just that. Their findings, reported in the British medical journal *The Lancet* and elsewhere, supported Summers's conclusions.



George Rehnquist, whose wife, Lucille, was the first Alzheimer's patient to get THA, wants the FDA to approve the drug.

COURTESY OF GEORGE REHNQUIST

An FDA advisory committee on THA finally met in March 1991. Researchers from the drug's sponsoring company, Warner-Lambert, presented evidence that THA was effective for more than 40 percent of the patients in the study. Nonetheless, at a second meeting in July, the committee decided the study "had failed to show sufficient clinical effect to warrant approval of THA" and expressed concern about possible liver damage.

Summers and his colleagues protested that the government-organized study hadn't administered lecithin along with THA. In *The Lancet*, they disputed the charges of severe liver damage: "THA has been said to be severely hepatotoxic. We disagree. Although 8 (18%) of the 45 patients had any abnormality in liver function tests, only 2 were removed from the study for this reason, and in those exposed to THA for 18 months on average there was no trend towards cumulative toxicity." Dr. William Maddray, a hepatotoxicology specialist, had testified at the FDA's hearings that, when monitored through routine blood tests, a patient taking THA was "highly unlikely" to suffer permanent damage.

Meanwhile, relatives of Alzheimer's patients who participated in the study insisted they had seen improvements in the conditions of their spouses and parents. Last April *The Wall Street Journal* printed messages to the FDA from some of them. One man wrote: "Get off your butt! Get on the fast track and release THA for Alzheimer's patients as you released AZT for AIDS. THA gave my wife three fairly good years before Alzheimer's gained the upper hand and I finally had to place her in a nursing home in July 1990. People with Alzheimer's are sentenced and on death row. Help them, FDA, while medical science searches for a cure."

A woman wrote: "THA did not restore [my husband] to normalcy, but he no longer walked five feet behind me, could cut his own food, feed himself, recognize me, and play limited golf. He again had hope and would smile and laugh and *try*! The FDA allowed us to import THA for our own use. After several months, it rescinded the permission. Under the guise of protecting us, the FDA is making a criminal of me."

The FDA ignored Summers's objections and dismissed the claims of family members as "anecdotal." At the agency hearings on THA, Kessler repeatedly asserted: "Above all, we must maintain our standards."

Those standards can be flexible, however. In 1989 the FDA began investigating Project Inform, an AIDS advocacy group in San Francisco that was conducting a secret trial of the experimental, highly toxic AIDS drug Compound Q, which the organization was importing from China. (The drug is derived from the root of a cucumber plant the Chinese have used for centuries to induce abortions and treat cancer.)

Two patients participating in the secret project had died, possibly from the drug's high toxicity, and several others had experienced seizures or severe dementia. There were rumors that the FDA might bring charges against the renegade researchers.

But by March 1990 the agency had reversed course, not only downplaying Compound Q's serious side effects but giving the researchers its blessing to continue with their work. Never before had the FDA given a community organization, rather than a medical group, full control over research involving an unapproved drug.

Since then dozens of buyers' clubs for experimental AIDS drugs have sprung up around the country, in flagrant violation of the FDA's rule that only personal quantities of unapproved drugs may be imported. The FDA has proven "completely unwilling" to crack down on their illegal activities, says Steven Fowkes, president of Direct Action for Treatment Access in Palo Alto, California. He says the agency has a "two-tiered enforcement system, because the FDA knowingly allows buyers' clubs to sell drugs illegally, and yet it's not OK for other people to sell drugs illegally."

Asked whether buyers' clubs are illegal, FDA spokesman Don McLearn is noncommittal: "We are dealing with that now. In fact, we've gone around to buyers' clubs and discussed with them where lines may be drawn. We have explained to them that if they are going over that line we may have to take some legal action."

In turning to buyers' clubs, AIDS patients take responsibility for weighing the risks and benefits of using experimental drugs. Alzheimer's patients and their families argue that they, too, should be free to choose—between the oblivion of Alzheimer's disease and the possibility of

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FDAWATCH

reversible liver damage.

Most Americans seem to agree. In a nationwide survey conducted last fall by the Wirthlin Group, nearly 80 percent of respondents said an individual should have the right to use an unapproved drug for treatment of an incurable illness.

"It is immoral for the FDA to deny

Like AIDS activists, Alzheimer's patients and their families argue that they should be free to choose—to weigh the risk of reversible liver damage against the potential benefits of THA.

access to drugs for life-threatening illnesses for which there is no medical treatment," says Fowkes. Fumento argues that "the information is the most important thing" in the choice to try an experimental drug. "If somebody wants to experiment with their own life, that's fine," he says. "And if a doctor, with full and informed consent, to a degree wants to experiment with somebody else's life, that's fine too."

The problem, Fumento says, is that a regulator's interests differ from those of the people he supposedly serves. "The bureaucrat's view is very simple," he says. "If I, as a bureaucrat, prevent a drug from going into use, and the prevention of that drug results in 100,000 deaths, no one will ever stick that on me. But on the other hand, God help me if I approve something prematurely and one person dies from it. Then I'm out of a job; then my name is mud throughout history."

George Rehnquist, a board member of Families for Alzheimer's Rights, is unmoved by the FDA's claim that it is only protecting the public: "The government should not be playing God with our loved ones."

Elizabeth Larson is a REASON *researcher-reporter.*

Duty Call

BY LOREN E. LOMASKY

Rights Talk: The Impoverishment of Political Discourse
By Mary Ann Glendon, New York: The Free Press, 218 pages, $22.95

Mary Ann Glendon warns against framing every controversy as a clash of rights.

Mary Ann Glendon is glum about the condition of rights discourse in America. Perhaps that's due to being on the same junk mailing lists that I am. Last week's delivery brought me an oversized red, white, and blue envelope from something called the "National Association to Protect Individual Rights." Beneath a tasteful etching of the Statue of Liberty it lists "inalienable rights" of: Taxpayers, Retirement, Life-style, Victims, Employees, Personal Privacy, Sportsmen, Environmental, Smokers, and (how does this one fit in?) Citizens. There may have been more on the inside; I didn't have the heart to find out.

This throw-away mailing is symptomatic of what Glendon aptly characterizes as "our increasing tendency to speak of what is most important to us in terms of rights, and to frame nearly every social controversy as a clash of rights." By doing so we stake out nonnegotiable positions and signal a refusal to acknowledge coherent reasons on the other side. Grounds for potential productive compromise are spurned. Instead of opening our thinking to considerations of individual responsibility, civic virtues, and the creation of devices for living better together through a tolerant acceptance of differences, we imprison it in a legalistic straitjacket. The result is an increasingly more strident, more fatuous political discourse.

Glendon's indictment will, of course, be warmly received by those who would just as soon dispense with all talk of rights. For technocratic social planners concerned to tinker endlessly via cost-benefit calculations or utopians zealous to institute their personal vision of the Good Society, rights are, at best, annoyances that stand athwart their designs. But those who place serious stock in natural rights should also welcome Glendon's discussion.

The proliferation of heretofore unsuspected rights is a kind of inflation that cheapens our moral currency. Within the tradition of classical liberalism, rights have been the heavy guns in the moral arsenal. They impose constraints with which individuals must comply. Precisely for that reason, they are to be employed sparingly. People cannot live freely if they are hemmed in on all sides by binding requirements. Therefore, rights should be conceived as establishing a moral baseline to which all must adhere. Beyond such minimal compliance, persons remain at liberty to order their doings in accordance with their own ideals of a fulfilling and responsible life. Insofar as rights establish a bulwark within which persons are protected from interference, they are liberating. Extended beyond that domain, they become oppressive. *Rights Talk*, at its best, lodges itself in the heart of this liberal tradition.

Unfortunately, this best is only intermittently attained. While Glendon remains within her area of special expertise, comparative law, she is generally informative and insightful. But her attempts to develop a grand thesis lead her astray. In particular, Glendon's understanding of the pedigree and logic of liberal rights is deficient.

Rights as theorized by philosophers such as Locke and Kant are, she tells us, an "expression of unbounded desires and wants." That's precisely backwards. What is distinctive of this tradition is that the great stringency of rights is counterpointed by their sharply demarcated scope.

You can desire what you like, but that creates no rights against others to special treatment. Beyond noninterference—just being left alone—very little else can legitimately be claimed as a matter of right. Others may, of course, do more than merely display benign neglect, and no doubt they should do more. But whether they will is up to them. We do better, therefore, to say that the vocabulary of rights is one of explicitly bounded desires.

Glendon continually repeats the tired canard that classically liberal rights deny the essentially social nature of human beings, that they are crafted for self-sufficient "monads" complete unto themselves. To be sure, rights permit individuals to wallow in purely personal and selfish concerns. That is because they empower individuals to direct themselves by their own lights rather than spin to the tune of some self-proclaimed ethical guru. But while those who choose to live a thoroughly self-absorbed life may do so, those whose identity is largely constituted by ties to family, friends, religious denom-

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ination, or some other community of fellowship are equally at liberty to forge lives of meaning and worth for themselves within avowedly social contexts.

Indeed, the protections afforded by rights are a necessary if not sufficient condition for the existence of flourishing voluntary associations. The preceding half century of the Eastern European experience amply illustrates what happens to communities when "bourgeois rights" are scrapped.

Fixation on the language of rights, Glendon avers, drowns out attention to the claims of duty. This assertion is doubly defective. First, it ignores the patent fact that the corollary of a right is, logically, a duty, the duty incumbent on others to respect that right. If this is your front yard, if you have a right to its untrammeled enjoyment, then there is a concomitant duty on me not to dump my garbage on it, not to hold my picnics there without your permission, and so on.

But second, if what Glendon decries is the overgrowth of legalisms within our public moral and political vocabulary, then a turn away from rights to duties is hardly an improvement. Anyone who has ever been subject to legal judgment can confirm that the language of duty is every bit as juristic as that of rights. Glendon would be truer to the sound core of her argument were she to realize that the center of our moral lives is the realm in which our actions are subject to our own discretion rather than the unyielding call of duty. When we are obliged neither to do nor to refrain we display through our unconstrained choices what sort of persons we are. Indeed, it is through these choices that we make and remake ourselves as those particular persons. Not the least of the charms of robust rights to noninterference is that they afford us opportunity to develop, for better or worse, the character of responsible beings.

This criticism may seem unduly abstract, the sort of thing that could warm the blood only of professional philosophers. So let me repeat a story that Glendon tells in *Rights Talk*. It is a moving tale and one that, she thinks, has a moral. I too am moved by it, and I also spy a moral. But my moral and Glendon's are far removed.

During the 1970s, General Motors decided that it could better beat back the challenge of invading hordes of Hondas and Toyotas by constructing a new Cadillac assembly plant in the Detroit environs. The site on which it set its corporate heart was "Poletown," a neighborhood in which generations of Polish immigrants had settled, raised families, and constructed churches, schools, social clubs, and businesses. This history and web of institutions made Poletown irreplaceable to its residents.

So when Detroit supinely showed itself the faithful lapdog of G.M. and undertook to turn the land over to the corporation, the Poletown residents lodged an appeal to the Michigan Supreme Court to overturn the city's exercise of the power of eminent domain. They desperately invoked an analogy to environmental protectionism, arguing that the destruction of their community would do severe damage to the fabric of the social environment. The court was unmoved by this novel extension of environmentalism. Detroit's authority to condemn the properties was upheld, more than 4,000 residents were forced to move, and the plant was built. Ironically, the vast economic benefits that were cited as the public rationale for eminent domain largely failed to materialize.

Glendon, to her credit, recognizes that the pillage of Poletown was an outrage. Our legal procedures showed themselves sadly unable to safeguard the values of "roots, relationships, solidarity, sense of place, and shared memory" that were at stake. What we need, she concludes, is a legal and political discourse sensitive to such considerations.

The point, though, is that we already have it—or at least we once did. It is none other than the language of rights, specifically property rights. General Motors could not have swept away a neighborhood against the wishes of its inhabitants if the courts had been willing to uphold the owners' rights to security in their possessions. But, as Glendon notes, the day is long past when courts will interpose

themselves against a taking of property for a vauntedly public purpose. The unfortunate demise of Poletown, then, is not attributable to a proliferation of "strident" and "simplistic" rights demands; it is directly traceable to the erosion of respect for traditional property rights.

What we need is not a reformed political discourse that moves further away from invocations of rights but rather one that soberly yet insistently reaffirms the primacy of those foundational rights that were and remain the crux of classical liberalism. Glendon, however, fails to pick up this obvious cue. Why? I am convinced it is because her ideological senses have been dulled by listening too much to a simplistic public discourse, though decidedly not the discourse of rights.

Rights Talk situates itself within the "communitarian" strand of social philosophy. Communitarians cudgel liberals with the accusation that the latter pay insufficient heed to the need of persons to forge lasting ties within a context of small-scale associations that afford them the values by means of which they can orient themselves and lead meaningful lives. Although enjoying considerable current philosophical vogue (perhaps in virtue of filling the vacuum on the left created by the gradual withering away of academic Marxism), this critique has never been developed with more than sloganistic appeal.

Communitarian theory rests on a bogus opposition between liberal pluralism and individuals' ability to forge strong bonds with others. But as the Poletown scenario suggests, liberal rights to noninterference complement rather than clash with claims of community. The value of being left alone does not apply only to what Glendon calls the "lone rights-bearer"; it is no less crucial to those whose sense of self is sustained through intimate relations with others. Simplistic rights talk is bad rights talk, but simplistic community mongering is no improvement.

Contributing Editor Loren E. Lomasky, a professor of philosophy at Bowling Green State University, is the author of Persons, Rights, and the Moral Community.

The Pork Ethic

BY BRIAN DOHERTY

The Culture of Spending, by James L. Payne, ICS Press, 225 pages, $24.95

Runaway public spending is the one fact that advocates of limited government can't wish away with rhetoric about turning tides of ideology or sea changes in cultural values. It is a bottom line staring them in the face, blood red.

Fiscal conservatives have a pretty standard explanation for why we always end up with growing spending, growing taxes, and a growing gap between the two, even though everyone hates deficit spending in principle. This explanation can be reduced to a couple of catchphrases: "concentrated benefits and diffuse costs" and "vote-maximizing congressmen." Both are offshoots of the public-choice school of economic thinking.

James L. Payne's *The Culture of Spending* attempts to modify the former explanation and debunk the latter. The shibboleths that Payne assaults have a certain tidiness and emotional appeal. They enable us to blame government's fiscal predicament on classic, evil motives that are readily grasped and personified: the greed and power lust of individual legislators. It's easy to see members of Congress as cinematic villains.

It's harder to see them as Payne portrays them: well-meaning, though slightly hapless, guys and gals just like us, who tend to believe what the evidence they see indicates. And, as Payne painstakingly shows us, the evidence congressmen see overwhelmingly tells them one thing: Government programs are good—all of them, pretty much all the time.

As an Appropriations Committee staffer tells Payne, the ratio of prospending to antispending testimony that the average congressman hears or sees in committee hearings, mail, and visits to his office is "several thousand to one." Payne escorts the reader through the intellectual odyssey of a congressman in his first chapter, letting even the most hard-nosed antispender see that, without the inoculation of a firm and fully considered antistate philosophy, the average congressman—honest, willing to learn, essentially of decent and humane character—will turn into a red ink machine.

Hour after hour, day after day, year after year, and eventually decade after decade, congressmen hear practically nothing but testimony on the necessity

The evidence congressmen see tells them one thing: Government programs are good—all of them, pretty much all the time.

and efficacy of every government program there is. The evidence is compellingly presented, backed up by hard numbers and complicated cost-benefit analysis, and says one thing and one thing only, over and over again: Spend on this, spend on this, spend on this. Sure, everyone knows that "government spending is out of control"; but *this* specific program being voted on right now always has the weight of evidence in its favor. This inescapable aura of prospending persuasion is what Payne calls "the culture of spending," and a congressman is immersed in it from his first day in office to his last.

It matters not that the evidence presented is often trumped-up or that the analysis of program efficiency is always done by people with a vested interest in continuing the program. No independent force outside this culture (including the press) is trying to tell Congress any different. Adherents of the culture of spending always rule the day.

Payne garners data to prove his thesis that a) congressmen tend to spend more the longer they're in office, no matter what party they belong to; and b) this spending bias isn't ideological: Those who tend to spend on "wealth redistribution for the poor" also tend to spend on "middle class entitlements." A spender is a spender is a spender.

Payne does find one ideological fault line between liberal and conservative. He prefixes these terms with an *N*, for "new," because he thinks the categories aren't the same as the traditional American notion of liberals as supporters of the underprivileged and conservatives as supporters of big business.

He sums up the real difference this way: "N-liberals represent the type of legislator who is most affected by the immediate aspect of things, and disposed to support the manifest solutions to problems. The N-conservatives tend to discount the manifest, and are more inclined to emphasize the latent aspects of a policy question." (This distinction is also supposed to explain the "anomaly of defense spending," where big spenders elsewhere are suddenly frugal and vice versa. I suspect more traditional ideological concerns may be at work here.) In other words, conservatives tend to see the Hazlittian secondary and tertiary consequences of government actions, whereas liberals do not. Payne finds that, as might be expected, N-conservatives tend to congregate in the Republican Party.

Payne makes hash of the standard public-choice notion of vote-maximizing congressmen, which he calls the "economic voter theory." Payne argues, with support from political-science research, that bringing home the pork is no guarantee of successful re-election; that congressmen have no way of translating their spending decisions into votes received; and that voters tend to be rationally ignorant of how their congressman is spending anyway. Payne makes the case that "voting more in favor of spending has no positive effect on a congressman's electoral margin" and that "electorally-secure congressmen are just as much in favor of spending as other congressmen."

Payne's thesis is not heartening, except perhaps to political-science grad students who might see in it an opportunity to do loads of number crunching in an attempt to verify or falsify his conclusions. (The information he draws on is not comprehensive.) Strategically, it leaves antispending advocates with no useful option (Payne argues cogently that legal spending limits will not be effective, as the fate of Gramm-Rudman testifies) except term limits (electorally difficult) or facing up to the *real* dilemma of concentrated benefits and diffused costs.

For the individual taxpayer, of course, it's costs that seem concentrated and benefits that seem diffused. Payne points out that this led Anthony Downs, whom he calls "a leading founder of the public-choice school," to conclude that governments would always end up *underspending*. But this applies only to the whole tax bill and the entire budget. Again, on every specific spending bill, it's those who have something to gain from Congress who can take the time to present their facts and their arguments for its necessity.

As a possible solution, Payne seriously advocates that ordinary citizens take the time to testify against spending bills. He did it in preparation for the book, and he seems to have had a good time. It was this experience, I would guess, that was really the key in crystallizing his thesis, more than the numbers he later found to back it up.

Payne seems to have been genuinely impressed with the humanity and just-folksness of those previously faceless pork demons in D.C. He felt that his testimony against agricultural research programs before the House Agricultural Appropriations Subcommittee and its longtime chairman, Rep. Jamie Whitten (D-Miss.), really got through—if only for a moment—to the crusty old ag-warrior. Payne writes that Whitten became "apologetic and hesitant."

Of course, Whitten then was swept back into the cultural norms of Washington by the hundreds of prospending witnesses who followed and who continue to follow. The culture of spending is monolithic and in the end may prove even more difficult to surmount than a mere ideological predisposition. It is those premises we *don't* think about that truly rule us, congressman or citizen.

Brian Doherty is a contributing editor for Liberty.

A Case of Malpractice

BY OREN GRAD

The Great White Lie: How America's Hospitals Betray Our Trust and Endanger Our Lives By Walt Bogdanich, New York: Simon & Schuster, 320 pages, $23.00

America's hospitals swallow more than $200 billion in federal and private funds each year through a convoluted and constantly evolving payment system. They serve as workshops for competing, hard-to-manage groups of professionals and come under the purview of a complex, multitiered system of regulation. Bureaucratic and professional power struggles are common. In their day-to-day functioning, life-and-death crises—some successfully resolvable and some not—are literally routine.

Enormous problems plague our health-care system. It should come as no great shock that there's some muck there to be raked. Journalist Walt Bogdanich applies himself to the task in his new book, *The Great White Lie: How America's Hospitals Betray Our Trust and Endanger Our Lives.*

Bogdanich focuses on two problems. Hospitals misbehave, sometimes with catastrophic consequences for their patients. But consumers don't have the kind of information that would enable them to pick their way through the health-care minefield and avoid such abuse. Address the latter problem and the former might be solved as well, as informed con-

sumers drive negligent providers out of business. But driven to indignation by the dirt he has found, Bogdanich flames out before making much of a contribution to cleaning it up.

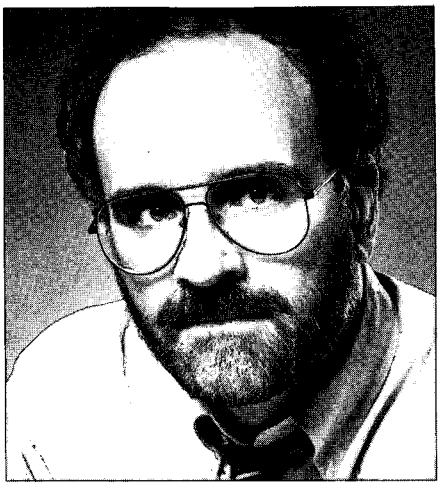
What is "the great white lie"? It's "a myth holding that hospitals and doctors are equally good and deserving of our complete, unquestioning trust." This is, of course, a straw man: When was the last time you chose a doctor or a hospital by tossing a dart at the phone book? But by the same token, how often have you found reliable information about health-care services so difficult to obtain that a decision seemed little better than random in the end?

For our edification, Bogdanich offers a litany of medical misdeeds. After teasing us with the murder of a young physician resulting from inadequate security at chaotic Bellevue Hospital in New York, he moves on to a main course consisting of three parts.

"Cutting Corners, Plugging Holes" deals primarily with sloppy personnel practices. Three chapters examine hospital responses to the nursing shortage, particularly their reliance on temporary nurses, with a focus on one especially slimy temp agency in Florida. Another chapter details the catastrophic consequences of slipshod pharmacy management at a major hospital in North Carolina. As a loose end, Bogdanich throws in a chapter on the shuttling of helpless elderly patients between hospitals and nursing homes because of financial pressures.

"The New Ethics" emphasizes the financial side. Three chapters uncover systemic flaws in the implementation of the diagnosis-related-group–based prospective payment system adopted by Medicare in the early 1980s. Another chapter describes a California hospital's fraudulent manipulation of the DRG case-coding system to maximize Medicare reimbursements. Two final chapters tell of bribes and kickbacks paid to physicians for patient referrals by for-profit chain hospitals in Louisiana and Texas.

"Absent Watchdogs" tells of dereliction of duty by regulatory agencies. Two chapters describe ludicrously substandard hospitals in Ohio, New York, and Pennsylvania, allowed to remain open through the negligence, or worse, of state and national licensing boards. One chapter reports lax clinical laboratory oversight at hospitals in Virginia and Illinois. Another touches base with some of Bogdanich's colleagues in journalism, contrasting kid-glove treatment of a local hospital by the Topeka daily with gutsy work by a small-town newspaper publisher in Ohio. A closing chapter follows an epidemiologist as he unravels serial murders by a nurse in a Maryland intensive-care unit.



By focusing on gross abuses, Bogdanich obscures deeper problems.

The stories are depressing enough—indeed, those in which people die because of negligence or greed are downright horrifying. They're briskly told, full of color—and as the catalog above suggests, anecdotal to a fault. *Egregious Examples of Hospital Fraud and Mismanagement That I Investigated in Recent Years* would be a more apt title for this volume.

As an evaluation of the impact of flaws in the health-care system on the patient, *The Great White Lie* is inadequate. Bogdanich sees his cases as "not mere freak accidents or anomalies," but rather indications that the system is rotten. Yet he never assembles the reports into a coherent picture indicating how representative these cases are of hospital practice as a whole.

Worse, he ignores a less sensational kind of patient abuse that may be consid-

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erably more important. One of the salutary effects of the increase in the costs of health care has been a new demand for research on health-care quality, on the reasonable grounds that inappropriate or incompetent health care is likely to be wasteful as well as dangerous.

Some of the findings of this research have been as staggering in their own way as anything reported by Bogdanich. It seems likely, for example, that far more people have been harmed—many grievously—by well-intentioned but unnecessary surgery than by any of the practices reported in this book.

Bogdanich's treatment of fiscal and management issues is equally weak. *The Great White Lie* implicitly attributes hospital fraud and mismanagement to Reagan-era regulatory decadence but provides neither the historical evidence to judge such an assertion nor any plausible scenario for reclaiming the presumed virtues of an earlier time. And the focus on criminal behavior obscures the deeper, structural causes of the health-care cost problem.

Finally, and perhaps most disappointing given the author's stated concerns, as a consumer guide the book falls short as well. Even assuming that the existence of these abuses is news to the reader, Bogdanich offers little useful advice as to what the reader can do to protect himself.

The emphasis on the consumer's perspective could have provided an effective organizing principle for this book. The fact is that accountability to the patient has never been a criterion of major importance in the health-care system. To the contrary, the fundamental reforms that created the system as we know it today had the effect of insulating it ever more completely from the most basic kind of scrutiny by its supposed beneficiaries. This historical reality isn't irrelevant to our present predicament. Bogdanich seems to understand this, so it's a pity he didn't apply his evident talent as a reporter to the bigger picture.

While muckraking isn't without its value, when public policy on complex matters is at stake it can be a double-edged sword. Righteous indignation gave us a Food and Drug Administration that throttles innovation in order to avoid headline-grabbing horror stories, while depriving countless hidden victims of the benefits of potentially effective drugs—and of the personal choice of what risks to assume in the pursuit of health.

The present cry for systemic health-care reform carries both opportunities and risks. The cost problem is overwhelming. In many quarters, the desperation to find something—anything—that will put a lid on costs is almost palpable. The path to a genuine consumer-centered market discipline is perilous and uncertain. In this particular crowded theater the temptation to yell "fire" is both great and misguided.

Oren Grad, an M.D. with a Ph.D. in health policy and management, is a visiting scholar at the MIT Center for International Studies.

Local Option

BY JAMES OSTROWSKI

Undoing Drugs: Beyond Legalization, by Daniel K. Benjamin and Roger Leroy Miller
New York: Basic Books, 296 pages, $23.00

In July 1990, public support for some form of drug legalization stood at an all-time high—about 25 percent, up from low single digits in the early 1980s. One month later, Saddam went into Kuwait. Crisis in the Gulf began, followed by war in the Gulf. As usually happens in wartime, domestic issues were quickly cast aside—drugs included. The legalization movement was devastated by these events and, given the current focus on economic stagnation, hasn't yet recovered.

There are two schools of thought on what happens next. One view is that a unique opportunity for drug-law reform was lost in August 1990, and it will take years to rebuild the momentum for change and find a time when neither the economy nor foreign affairs is in a state of crisis. A more optimistic view holds that now that the drug war is being de-emphasized—probably in Machiavellian fashion by the Bush administration (which knows it can't work)—drug hysteria is also declining and reform proposals can be considered in a calmer and cooler atmosphere.

If the latter scenario is correct, then a new book, *Undoing Drugs: Beyond Legalization*, by Daniel K. Benjamin and Roger Leroy Miller, could have a major impact on drug policy in the near future. In either event, this well-written, well-researched, and mostly well-argued book may well be the reference point for drug-policy debates throughout the '90s. Benjamin and Miller's thesis is that "the current failure in the war on drugs lies in the fact that we have a policy of uniformity imposed upon a nation of diversity." They propose a federalist approach to drug policy in which the states would take the lead role while the federal government's role would be severely limited.

States could legalize drugs, continue the status quo, or even get tougher on drugs, depending on the wishes of each state's residents. A federalist approach, the authors argue, would allow a maximum amount of local control (even at the county level) and experimentation geared to the particular conditions and values predominant in each locale. They note that the federalist model has worked for alcohol for nearly 60 years.

In evaluating our current drug policy, Benjamin and Miller adopt a legalization point of view: The drug war causes more problems than it solves. They even advance the legalization position. For example, they argue that prohibition encourages rapid and thus dangerous drug consumption because of the need to hide the evidence of a crime. They effectively dissect the assertion that 350,000 "crack babies" are born each year. The number is closer to 30,000.

They explicate a point rarely seen in

the literature: "Raising the penalties for drug dealing is equivalent to lowering the penalties on other crimes committed in the course of the illegal drug business. The result is more intimidation, violence, and lawlessness by drug dealers." Their recounting of the history of the crack trade and how it created vast and violent drug gangs is excellent.

Benjamin and Miller's argument for federalism assumes that some states will legalize or decriminalize at least some drugs. Nevertheless, the authors say they do not "know what the correct drug policy is." They even suggest that states could fight the drug war better than the federal government can. This argument is strained and unconvincing, particularly since tough enforcement worsens the problem anywhere and everywhere. Also, government tends to be incompetent, unresponsive, and bureaucratic at every level.

The authors attempt to paint an idealized picture of local law enforcement, portraying it, for example, as less of a threat to civil liberties. In the same book, however, they recount how Boston police "stopped hundreds of people just because they are young and black." They suggest that people dissatisfied by a state's get-tough approach could move to a more liberal state, but such moves are costly, economically and psychologically. In a free country, bad policies, not good people, should move.

Under Benjamin and Miller's proposal, the federal government would retain the right to tax drugs. This is a structural flaw in the proposal, since exorbitant tax rates could be used to establish de facto prohibition against the wishes of particular states. Their concept (anticoncept?) of the "freedom" to live in a city where no one has the freedom to use certain drugs is also troubling.

None of these points invalidates the authors' basic argument that federalism "will yield a better set of drug policies, as the states adjust their policies to correspond to the differing preferences and circumstances of their citizens." But there are some political problems with the federalist argument. Given the overwhelming support for prohibition throughout the country, it is not clear that any state would legalize drugs. Each state already has laws banning drugs. Alaska recently reprohibited marijuana, and in liberal New York a bill to legalize drugs has gotten little support.

While the authors decry the federally led drug war, this war would not be possible without nearly unanimous support from the 50 states. They themselves admit that "the vast majority of all drug prosecutions—well over 95 percent—are handled in state and local courts." So where will the diversity of approaches come from? The authors, who have a legalizer's grasp of the failures of current policy but a prohibitionist's reluctance to end the drug war entirely, do not give the states a clear recommendation on what to do after federal control is lifted.

If certain key states and localities lost their enthusiasm for enforcing prohibition, the drug war would be doomed.

Interestingly, the states and even localities can already opt out of the drug war, without federal approval. This is because the bulk of drug enforcement takes place at the local level. If certain key states and localities lost their enthusiasm for enforcing prohibition, the "war" would be doomed because the federal government is incapable of engaging in large-scale local law enforcement. The national drug war is a house of cards. Loss of one card could threaten the entire edifice. Even cities can opt out. While drug laws are enacted by the states, it is localities that must allocate resources to enforce them. Prohibition can therefore be fought at any level of government.

This suggests the most serious argument that prohibitionists can make against a federalist approach. If drugs are legalized anywhere in the country, dealers will simply buy there cheaply, travel to other states, and sell cheaply while still making a profit. The authors counter this argument by assuming high taxes on legalized drugs. But the main point of legalization is to drive prices way down so that drug-related crime and violence decline. The authors themselves recognize this and write elsewhere of prices near the "pharmaceutical cost." It is also doubtful whether the federal government could stop interstate smuggling, as the authors propose. Unlike international smugglers, interstate smugglers cannot be arbitrarily searched while crossing state lines.

Perhaps the best response to the prohibitionists is that legalization in one state may well drive drug prices down elsewhere, but crime, violence, and corruption in those other states will also decline and quality control will be vastly improved. The authors, reluctant to fully endorse legalization and eager to play down the national aspects of the drug market, do not make this point.

Drug legalizers, who would not be bothered in the slightest by localized legalization, will likely support this federalist approach as a movement in the right direction. However, there is a hard core of prohibitionists who will vigorously oppose a federalist approach to drug control. This is particularly true of such neoconservatives as William Bennett, James Q. Wilson, and A.M. Rosenthal.

But there is another emerging branch of conservatism—the "paleoconservatives." Already splitting off from the neocons on foreign-policy issues, the antiglobalist, anti-Washington paleocons, who take federalism seriously, may also be ready to send the drug problem back to the states and localities. (It may be significant that Pat Buchanan, the paleocon torchbearer in the Republican primaries, has had little or nothing to say about drugs.) If that is the case, then an odd coalition of libertarians, paleoconservatives, ACLU liberals, and frustrated members of the general public could very well enact the federalist approach to drug policy first proposed by Daniel K. Benjamin and Roger Leroy Miller.

James Ostrowski is an attorney and writer in Buffalo, New York.

OLIVER STONE'S BRAIN IS MISSING

BY THOMAS W. HAZLETT

Don't laugh, but I did expend seven dollars U.S. to see Oliver Stone's *JFK*. This film screams with lies, distortions, and incredible innuendo in virtually every frame. But worse: It is a boring, bad, D-U-M movie. I don't care where Siskel and Ebert stick their thumbs, if this film is art, Jesse Helms is an intellectual.

JFK is idiotically heavy-handed; Stone wouldn't know a nuance if it hit him over the head, which (outside of a Stone film) nuances don't do. The male homosexual characters, for instance, are sensationally played up as drag queens (in violence to the facts). And people Stone thinks are lying are about as good at it as was Martin Short's classic nerve-wracked, chain-smoking, stonewalling liar on *Saturday Night Live*. Even the acting stinks; Kevin Costner, constantly on screen, never wavers a micron from his "Concerned American" mode. Just one little tip, Kevin: If you should ever actually go to New Orleans, lose the phony accent.

JFK does prove one thing of great value: that even though every single American who has attained any position in business or government is in some way linked to Them (the evil cabal which conspired to kill Kennedy), Oliver Stone can still make a $40-million movie exposing this skullduggery to the American public. What happened to the combined forces of the CIA, FBI, Army, Navy, Air Force, Marines, the Dallas P.D., aerospace contractors, the U.S. Supreme Court, the news media, and the Cosa Nostra? Aha! Maybe these powerful and ruthless men were the ones who forced Stone into making this film a snoozer!

But how will our public-school children ever figure this out, you wonder? Not to worry: That's what They put my column here for.

I overheard a woman of about 27 years say to her friends: "You must understand. Everyone was very right-wing then, so of course they were scared when a peace-loving president got in the White House." But dear, you were only a spermatozoa at the time, so your recall may be fuzzy.

While living, JFK was the guy who stuck 16,000 advisers in 'Nam to begin with. He made up the "missile gap" when running against Tricky Dick in 1960, scaring our patriots about Sputnik and Soviet military superiority. Joe McCarthy's biggest booster was Papa Joe Kennedy, and Eleanor Roosevelt despised the entire Kennedy clan because of their retro anticommunism. Yes, Oliver, there certainly was a massive cover-up, starting somewhere back in the 1930s.

Stone enjoys shadowboxing straw men. You must either believe me (or something close to me), or believe the Warren Commission, bellows the Director of Conscience. This choice is making me rethink the Warren Report, which has never made much sense before. The lone gunman theory is made suspect by the easiest fact: Jack Ruby rubs out Lee Harvey Oswald. The idea that this Mafia-connected night-club owner was distraught over the death of our president challenges even my gullibility. My approach is to connect the simplest points: A president who jails mobsters and cracks Joe Valachi, the very first Mafioso to spill the beans, is going to have to pay a little higher life-insurance premium.

Then he goes and tries to rub out Castro but fails—after contracting the job to the Mob. Well, now....Why wouldn't they just give Fidel a buzz, tell him an angry little tale, and ask him for a nice plump assassin/fall guy, say an Americano who had Communist Anti-American tendencies? Then erase the trail by knocking off the gunman with a mobster about to die of natural causes. Lone nut? Doesn't pass the smell test.

But not even the lacunae of the Warren Commission can *parfum* the odious *JFK*, a film so frantic for conspiracy that it contradicts its own story line. The movie tries to tell us that Oswald wasn't even on the sixth floor to shoot at the motorcade; he was spotted just minutes before in the second-floor cafeteria and just seconds after downstairs as well.

But...the longest running theme in the movie is that Oswald was a "patsy" for Them (the ubiquitous Patsy should be nominated for Best Supporting Actress). Well, what a blunder to forget to put your patsy in shooting position when the shots are fired. A single random witness may then blow your whole Big Scheme.

The buffoonery goes on. The movie's superhero, Jim Garrison, was in this life a sleaze, and the movie's expert consultant is a Liberty Lobby nut case. And the two interminable monologues linking half of U.S. registered voters to the assassination, or its cover-up, are absolutely preposterous. The film cries out to be subtitled, "Let he who has not conspired cast the first Stone."

But let me tell you a secret. *JFK: The Nonsense* has been a big thrill for me. I read the juicy exposé in *Esquire*, the dual hit pieces in *GQ*, the cover stories in *Time* and *Newsweek*, Tom Wicker's assassination in *The New York Times*, and a spray of fire in the *Washington Post*. I loved Gary Trudeau's satire on the *Times* op-ed page (charting the course of Stone's limo as it handled small-arms fire from every direction, finally speeding away to the bank as soon as the movie opened to packed houses). I even watched Oliver Stone at the National Press Club: 4 a.m. on C-Span.

For all its shortcomings, this cinematic grotesquery provoked thought and discussion. It prospected a Big Subject and had the guts to stake a claim. Surely I got my $7.00 worth. God bless you, Oliver Stone, for your gallant, if ugly, tour de farce. I really hope They find your brain, and decide to give it back. You deserve it.

Contributing Editor Thomas W. Hazlett lives in Washington, D.C.

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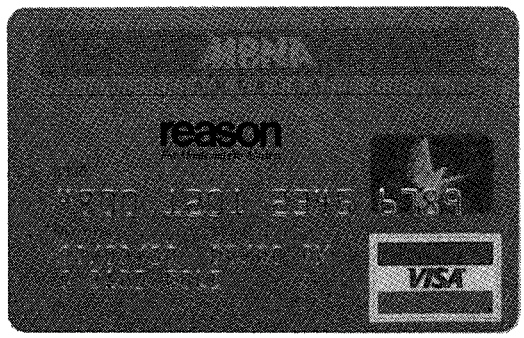

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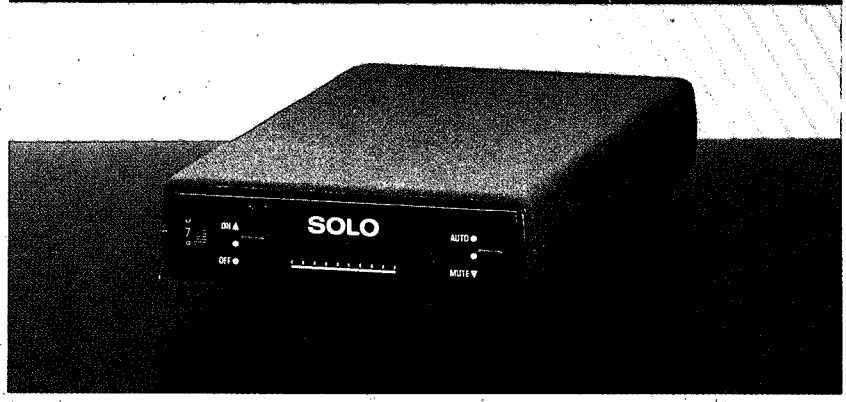

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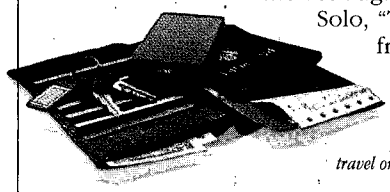

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